Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 655

C. H. ACKER, DOING BUSINESS AS C. H. ACKER & COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED DECEMBER 23, 1935.

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IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 13829

C. H. Acker, Doing Business as C. H. Acker and Company; J. M. Corrick, Fred Hatch and P. B. Unthank, a Partnership Doing Business as Adams, Corrick and Hatch; Alfred E. Adler and John G. Adler, a Partnership Doing Business as Adler Sons and Company; Alexander, Conover & Company, a Corporation; W. C. Allen, Harry W. Aller, Louis Armbrecht Commission Company, A. C. Baker, E. H. Baker, and F. L. Heyne, a Partnership Doing Business as Baker, Heyne and Company; Clarence N. Ball, C. S. Barry, Tom J. Barton and T. P. Looney, a Partnership Doing Business as Barton, Looney Company; H. L. Bell, G. A. Benton, Doing Business as Benton and Company Livestock Commission Merchants; Bowles Livestock Commission Company, a Corporation; F. J. Brennan, Doing Business as F. J. Brennan Company; Gideon Broberg, Willis H. Brott, Doing Business as Brott Livestock Commission Company; Geo. M. Brownson Doing Business as Geo. M. Brownson and Company; L. W. Budd, Doing Business as L. W. Budd and Company; Chas. L. (Abe) Burnett, Doing Business as Abe Burnett and Company; Walter M. Burrows, Maurice J. Callahan, Doing Business as Callahan Livestock Commission Company; Harry L. Carpenter, Central Livestock Commission Company, a Corporation; Eugene A. Clark, Doing Business as Clark, Bowles and Company; John Clay, Frank H. Connor, Alan F. Wilson and Chas. G. Smith, a Partnership Doing Business as John Clay and Company; N. W. Cochran, A. W. Henneberry and R. W. Wallace, a Partnership Doing Business as Cochran, Henneberry and Wallace, Conklin Brothers Commission Company, a Corporation; H. D. Copeland and Company, a Corporation; H. H. Daniel, William Daniel, David Degen and Jos. J. Amschler, a Partnership Doing Business as Degen and Amschler; P. T. Dolan and Hokan

Roll, a Partnership Doing Business as Dolan, Ludeman and Company; Edward F. Keefer, Doing Business as Doud and Keefer; P. E. Moore and E. A. Woods, a Partnership Doing Business as Drovers Commission Company; H. C. Dunbar, Doing Business as Dunbar, St. John [fol. 6] & Company; H. L. Dunning, Doing Business as H. L. Dunning and Company; E. H. Egan, Doing Business as E. Egan and Company; Warren S. Egan, Doing Business as Owen C. Egan and Company; J. L. Ettlinger, Doing Business as Ettlinger Livestock Commission Company; Evans Snider, Buel Commission Company, a Corporation; Filler, Wilson and McClelland, a Corporation; Geo. Foale and Edw. Foale, a Partnership Doing Business as Foale Brothers; Leonard S. Foster, R. C. Foster, B. G. Fosterson, Wm. Gentleman, Wm. M. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, a Partnership Doing Business as J. A. Frazier and Sons (in Joint Operation with Wm. Gentleman and Sons); C. F. Freeman, Doing Business as Fred Freeman; I. O. Fry, Felix Gehrmann, Wm. Gentleman, Wm. M. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, a Partnership Doing Business as Wm. Gentleman & Sons (Operating J. A. Frazier Sons); S. G. Gillogly, R. E. Gillogly, F. D. Gillogly and M. W. Gillogly, a Partnership Doing Business as Gillogly and Company; H. W. Williams and H. L. Johannesen, a Partnership Doing Business as Googins and Williams; Geo. J. Greenwood, Doing Business as Greenwood Commission Company; Charles A. Hafner, Doing Business as Hafner, Nixon Company; Wm. Haime and Geo. Reneker, a Partnership Doing Business as Haime and Reneker; Chas. E. Harding Company, a Corporation; C. W. Hart, Doing Business as C. W. Hart Commission Company; John A. Havey, Hefner Commission Company, a Corporation; Geo. F. Hogan, Doing Business as Geo. F. Hogan and Company; E. Holloway, P. A. Ogren, Tex Holbert and E. J. Andrews, a Partnership Doing Business as Holloway and Ogren; Frank M. Huffaker, Jr., H. H. Hutcheson, Doing Business as Huffman and Hutcheson; Ingwersen, Mosier and Ingwersen, Inc., a Corporation; Iowa Live Stock Commission Company, a Corporation; W. O. Jennings, Doing Business as W. O. Jennings and Company; Robert E. Johnson, Doing Business as Robert E.

Johnson Commission Company; Chris Jordan, Mike Tamble and John Permesang, a partnership doing business as Jordan, Tamble and Company; Edward Joyce, Samuel Keating, J. B. Keller, P. H. Keller and J. H. Keller, a Partnership Doing Business as J. B. Keller and Sons; Kennett Murray Company and B. F. Pierce, a Partnership, Doing Business as Kennett, Murray and Company; Lyman Keys, Doing Business as Lyman Keys Commission Company; Albert S. King, John Clay, Frank H. Connors, Alen F. Wilson and Chas. G. Smith, a Partnership Doing Business as C. A. Kleman; Dave Klopfer, E. Knettle, Doing Business as Knettle Brothers; E. H. Kuenster, Doing Business as Kuenster Live Stock Commission Company; John R. Lambright, Lyman A. Keys, and Wm. H. Huston, a Partnership Doing Business as Lambright, [fol. 7] Keys and Huston; Edward J. Lawler, Doing Business as Lawler Brothers and Company; Wm. J. Raff, Doing Business as John J. Lawler; Geo. H. Kelly, Doing Business as Lett and Kelly; McCausland, Hoag and Vaughan, a Corporation; C. A. McKelvey, Geo. J. McDonnell, Geo. E. Martin, W. A. Hanley and W. S. Burmister, a Partnership Doing Business as Martin Brothers and Company; Cyrus H. Martin, J. Lee Merrion and Russell Wilkins, a Partnership Doing Business as Merrion and Wilkins; Miller, White and Woods, a Corporation; B. F. Hubbird, Doing Business as Minteer, Hubbird and Company; C. H. Moberly, Moses E. Greenwald, Lee R. Hess and Arthur Ettlinger, a Partnership Doing Business as Moog and Greenwald; Frank R. Mullen, Doing Business as Mullen Commission Company; Stewart Mullen, A. R. Monroe, Chas. Murby, Wm. J. Murphy, Doing Business as Murphy Brothers; A. R. Jenkins, Doing Business as Murray and McDowell; Mutual Livestock Commission Company, a Corporation; Will J. Nalley, Doing Business as Nalley Commission Company; Joseph F. Nash, National Live Stock Commission Company, a Corporation; Simon Newhof, Chas. A. Hafner, Doing Business as Nixon Live Stock Commission Company; C. E. Nixon, Northwestern Live Stock Commission Company, a Corporation; Harry J. O'Conner, Doing Business as H. J. O'Conner & Son; Will H. Palmer, Doing Business as Silas Palmer & Sons; W. C. Patterson, Doing Business

as John Patterson and Son; W. A. Peterson and Wm. Turnbull, a Partnership Doing Business as Peterson, Turnbull and Company; Robert H. Pritchard, Doing Business as Pritchard Commission Company; John E. Quinn, Doing Business as Quinn Commission Company; Chas. R. Rice, Doing Business as Rice Brothers; Alex Rinderle, Doing Business as Alex Rinderle Company; W. P. Roach and J. B. Roach, a Partnership Doing Business as Roach Live Stock Commission Company; Chas. O. Robinson, Doing Business as Chas. O. Robinson and Company; Rosenbaum Brothers and Company, a Corporation; R. E. Compton and W. L. Compton, a Partnership Doing Business as St. John, Compton, Dunbar Company; Geo. Schrock, John P. Sarsfield and Joseph A. Sarsfield, a Partnership Doing Business as Sarsfield and Schrock Commission Company; A. P. Schmal, Henry Schroeder, Doing Business as Schroeder Live Stock Commission Company; F. W. Sheldon, Doing Business as Sheldon Commission Company; W. H. Sherwood and R. H. Sherwood, a Partnership Doing Business as Sherwood and Son; G. R. Sinclair, Doing Business as Sinclair Commission Company; R. E. Sinclair; John Smith and J. C. Eastes, a Partnership Doing Business as Wm. R. Smith and Son; L. Spencer, Doing Business as L. Spencer and Company; S. B. Stafford, Doing Business as Stafford Brothers; Standard Live Stock Commission Company, a [fol. 8] Corporation; Adrian F. Starrett, Jr., and Michael E. Peschong, a Partnership Doing Business as Starrett Live Stock Commission Company; Geo. F. Stephenson, Doing Business as Stephenson Commission Company, A. F. Steward, Doing Business as Steward and McIlhany; Stockmens Livestock Commission Company, a Corporation; J. E. Strader and J. L. Strader, a Partnership Doing Business as Strader Brothers; J. J. Sullivan and J. C. Sullivan, a Partnership Doing Business as Sullivan Commission Company; Joseph J. Sullivan, Alonzo Gilmore and Charles J. Castenholz, a Partnership Doing Business as Swanson, Gilmore and Castenholz; Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, a Partnership Doing Business as Swiney Brothers; H. O. Thompson, Doing Business as H. O. Thompson and Company; Guy L. Wheeler and Thos. K. Polley, a Partnership Doing Business as United Commission Company;

Geo. W. VonBerner, David C. Wagner, C. B. Waite, H. C. Walter and R. A. Walter, a Partnership Doing Business as Walter Brothers; C. A. Dunbar and Jas. H. Dunbar, a Partnership Doing Business as Walters and Dunbar; J. A. Waters, L. B. Werden, H. M. Wheeler, Wm. G. Norris, Doing Business as W. W. Wilson and Company; E. F. Woelfer, Doing Business as E. F. Woelfer and Company; Sam R. Wolfe, R. S. Whipple, Mrs. Kay Wood and Mary Ripple Wood, Co-executors of the Estate of Kay Wood, Deceased, Doing Business as Wood Brothers; Glen K. Wood; Will C. Wood, Doing Business as Will C. Wood and Company; Thos. J. Sinnard, Willard A. Roberts and Walter D. Mills, a Partnership Doing Business as Yancey-Sinnard and Roberts; W. E. Young, Doing Business as W. E. Young and Company, Petitioners and Plaintiffs,

vs.

United States of America, Henry A. Wallace, Secretary of Agriculture of United States of America; Homer S. Cummings, Attorney General of United States of America, and Dwight H. Green, United States District Attorney for the Northern District of Illinois, Eastern Division, Respondents and Defendants

Petition and Complaint—Filed Jan. 31, 1935

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

I

1. The petitioners and plaintiffs are individuals, partnerships or corporations as appears from their several [fol. 9] names, all registered and doing business under the Packers and Stockyards Act, 1921 (Title 7, Chap. 9, U. S. Code), as market agencies engaged in the buying and/or selling in commerce of livestock on a commission basis at the Union Stock Yards, Chicago, Illinois, which yards has been ascertained by the Secretary of Agriculture to be a "stockyard" as defined in said Act and which has been posted as such.

(2) Each of the petitioners has his or its principal office or principal operating office in the judicial district and divi-

sion wherein this suit is brought; and the orders of the Secretary of Agriculture hereinafter complained of do not relate either to transportation or to a matter complained of before the Secretary of Agriculture, but arose out of and upon the initiation of the said Secretary. Further, the orders hereinafter complained of were not made upon the petition of any party but arose out of and upon the initiation of the Secretary of Agriculture and the subject matter of said orders arose in the division and district wherein this suit is brought.

(3) The United States of America; Henry A. Wallace, Secretary of Agriculture; Homer S. Cummings, Attorney General; and Dwight H. Green, United States District Attorney for the Northern District of Illinois, are made respondents and defendants in this action pursuant to the provisions of said Packers and Stockyards Act, 1921; the Commerce Court Act (36 Stat. at Large 539, approved June 18, 1910); and the District Court Jurisdictional Act, a part of the Deficiencies Appropriation Act (38 Stat. at Large 219, 221) approved October 22, 1913; and amendments thereof. The jurisdiction of this Court arises from said statutes and laws; and also because this is a suit of a civil nature wherein the matter in controversy exceeds the sum or value of Three Thousand Dollars, exclusive of interests and costs, and arises under the Constitution or laws [fol. 10] of the United States, the correct decision of this suit depending, in whole or in part, upon the construction and application of the Constitution of the United States, particularly the Fifth Amendment thereof.

(4) The petitioners bring this petition in equity against the defendants for the purpose of suspending, enjoining, restraining and annulling that certain purported order of said Henry A. Wallace, Secretary of Agriculture of the United States (hereinafter called the Secretary) dated the 8th day of January, 1934, and that certain purported supplemental order dated March 12, 1934, in a proceeding pending before said Secretary entitled "Secretary of Agriculture v. C. H. Acker, doing business as C. H. Acker & Company, et al.", Bureau of Animal Industry Docket 402, instituted under the Packers and Stockyards Act, 1921. Said purported orders are arbitrary, capricious and unreasonable, and without and contrary to evidence adduced

at the hearing hereinafter referred to. Said orders are confiscatory of the property and of the business of the petitioners; and if put into effect, as the said Secretary is determined and threatens to do, will deprive petitioners of their property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

(5) Since the year 1865, there has existed in Chicago, Illinois, stockyards, commonly known as Chicago Union Stock Yards, to which producers and shippers of live stock send cattle, hogs, sheep, goats, mules and horses for sale. It is the primary market for the chief live stock producing sections of the United States. Its geographical location midway between the live stock producing sections and the meat consuming sections of the United States and the large volume of business transacted therein cause it to be regarded by the live stock industry as the basic market for live stock in the United States, if not for the world. The prices prevailing at the market of Chicago Union Stock [fol. 11] Yards establish and affect the price of live stock throughout the United States and throughout the world. Shippers to the Chicago Union Stock Yards reside in and ship from forty-five states of the Union.

(6) After the enactment of the Packers and Stockyards Act, 1921, the Chicago Live Stock Exchange (a trade association whose members comprise commission merchants and other market agencies), and all market agencies, members thereof, including some or all of the petitioners, agreed with the then Secretary of Agriculture that in lieu of the formal procedure and hearing provided for by the Packers and Stockyards Act, 1921, the entire subject matter and charges in a certain complaint by American National Live Stock Association and others against the Chicago Live Stock Exchange and others might be investigated by G. N. Dagger, in charge of the Division of Rates and Charges of said Packers and Stockyards administration, and Howard M. Gore, in charge of the Trade Practice Division of said Packers and Stockyards Administration, with full authority in said G. N. Dagger and Howard M. Gore as arbitrators, to finally adjust and determine the issues raised in said complaint. It was further agreed that the rates and charges and practices found to be just and reasonable by said arbi-

trators and recommended by them would be adopted by the Chicago Live Stock Exchange and the members thereof upon approval by the Secretary of Agriculture. Pursuant to said arbitration agreement, a copy of which is hereto attached, marked Exhibit A and made a part hereof, and after lengthy investigation and hearing, a schedule of rates and charges and practices was prescribed and found by said arbitrators, approved by the then Secretary of Agriculture and adopted by the Chicago Live Stock Exchange and the members thereof. A copy of said award and the schedule of rates, charges and practices so established and prescribed are attached hereto marked Exhibit B and B1 [fol. 12] and made a part hereof. Said schedule of rates, charges and practices has been in effect since the fifteenth day of September, 1923, and the petitioners and others similarly situated have, since that date, adopted and followed and used the said schedule. The said tariff or schedule so recommended, prescribed and adopted has remained in effect without substantial alteration since September, 1923. The rates, charges and practices so prescribed and adopted have not been utterly and entirely confiscatory of the petitioners' property, and the petitioners have been able to exist and to do business under them. Under said schedule of 1923, adopted in a period of economic distress, substantially all of the petitioners operated at a loss during 1933 despite material reductions in salaries and regardless of other substantial economies.

(7) On September 23, 1932, the then acting Secretary of Agriculture entered an order of inquiry and notice of hearing against the petitioners and others wherein it was directed that an inquiry be made for the purpose of determining the lawfulness of any and all rates and charges of the petitioners and of any rule, regulation or practice affecting the same, or the rendering of any stockyard service without making any charge therefor. Said order and notice further provided that a hearing would be held before an Examiner designated in respect thereto in Chicago, Illinois. A hearing was subsequently held beginning on May 15, 1933, before John C. Brooke, an examiner, purporting to act under and by the authority of the Secretary. Said hearing was subsequently postponed to May 26, 1933; proceeded from then until August 18, 1933, at which time it was adjourned to be resumed in Washington, D. C.; and was finally

adjourned on November 7, 1933. Oral argument was had on December 13, 1933, before the Secretary.

(8) On the 8th day of January, 1934, the Secretary executed and issued his Proceedings, Findings of Fact, Conclusion and Order (herein referred to as "Order") which said [fol. 13] Order is attached hereto, marked Exhibit C and made a part hereof, and which said Order is by this action sought to be suspended, enjoined, restrained and annulled for the reasons set forth hereinafter. By said Order of January 8, 1934, particularly by Paragraph 169 thereof, a schedule of purported reasonable rates, charges and classifications were prescribed and it was ordered that the rates, charges and classifications so prescribed should become effective thirty (30) days thereafter.

(9) On February 7, 1934, the petitioners filed a petition for rehearing alleging, in substance, that the schedule of rates and charges prescribed in the Secretary's Order would cause reductions in revenues which would make it impossible for the petitioners to pay necessary operating expenses; that there have been increases in expenses resulting from the operation of the National Recovery Act and the Agricultural Adjustment Act; that the schedule of rates and charges as prescribed in said Order of January 8, 1934, were not related to the cost of rendering service with respect to the different species and classifications thereof; that the petitioners desired to show that draft is a more equitable basis than consignment for the assessment of rates and charges; that the petitioners desired to show that the prescribed rates were not consistent with the level of cost or the trend of cost; that under the rates and charges in effect during 1933 substantially all of the petitioners had operated at a loss; that the rates prescribed by said order would not permit the restoring of salaries to the levels desired by the administration; and that the rates prescribed would necessitate throwing out of employment a large number of people; that the petitioners desired to prove that the Chicago market and the petitioners were efficient in the handling and selling of live stock in 1933 and 1934; that the conditions which prevailed during 1933 constituted a greater change than had occurred in any twelve months period prior thereto. Said petition for rehearing [fol. 14] was denied on the 12th day of March, 1934. By

the same order denying the petition for rehearing the schedule of rates, charges and classification of the Order of January 8, 1934, was slightly modified. The Order of March 12, 1934 (herein referred to as Supplemental Order), containing the modified tariff or schedule of rates, charges and classification is attached hereto marked Exhibit D and made a part hereof. By orders entered on the 23rd day of January, 1934, and by subsequent like orders, the Secretary ordered that the effective date of the Order of January 8, 1934, and the Supplemental Order issued March 12, 1934, be postponed to April 20, 1934.

(10) On April 9, 1934, the petitioners and others filed an Amended Petition for Rehearing alleging, among other things, that the rates and charges prescribed in said Order and said Supplemental Order would create a net reduction of twenty-five per cent of gross income as compared with income derived from the tariff rates and charges of 1923 declared to be unreasonable; that such reduction in income would be confiscatory for the reason, among others, that the income to be produced by the schedules of said Order and said Supplemental Order would not produce gross income sufficient to pay the usual and necessary costs of doing business; that the said Order and said Supplemental Order and the schedules thereof were based on findings for the years 1931 and 1932, while during the years 1933 and 1934 decided and profound economic changes have occurred adversely affecting the market agencies at Chicago; that the record and figures for the years 1931 and 1932 afforded no sufficient basis for the orders and schedules of the Secretary; that legislation of Congress and the rulings and activities of Administrative agencies of the Government, particularly the Agricultural Adjustment Administration, brought about drastic reduction in the production and mar- [fol. 15] keting of livestock, particularly hogs. Said Amended Petition for Rehearing was denied by the Secretary on April 12, 1934.

(11) The Secretary is determined and is threatening to enforce said Order and Supplemental Order herein charged to be unreasonable, arbitrary, and confiscatory. Heavy penalties and forfeitures are provided by the Packers and Stockyards Act, 1921, for failure to obey the orders of rates and charges of the Secretary, however arbitrary, unreasonable or confiscatory such orders may be. And the Dis-

trict Attorney for this District under the direction of the Attorney General has cast upon him the duty to prosecute for the recovery of forfeitures.

II

(12) The Chicago Union Stock Yards is a primary market and a market of last resort. It occupies a strategic and advantageous geographical and transportational position and the public market conducted thereat by the market agencies thereof is the basic live stock market of the United States. By reason of its position and proximity to the largest packing companies of the world, the market agencies of the Chicago Union Stock Yards are enabled to render invaluable service to producers and shippers of live stock and to readily and at all times convert live stock into cash. The services of the petitioners as market agencies of said Yards are indispensable and invaluable to the agricultural industry of the United States in furnishing a market for, and necessary service to, the producers of live stock and in distributing and selling live stock to agencies to prepare such live stock for human consumption or to live stock raisers and breeders for further production.

(13) Roughly one-half of the hogs and one-third of the cattle and sheep marketed in central markets within the [fol. 16] Chicago territory pass through the Chicago Union Stock Yards and are sold by the petitioners and others similarly situated.

(14) Upon the arrival of live stock at the Chicago Union Stock Yards, the operating company of the Stock Yards unloads the cars or trucks and furnish the necessary feed, charges for which are billed to customers in care of the petitioners. Except in the case of sheep, the petitioners make their own deliveries to pens assigned to them. The petitioners are commission merchants or agents who grade the live stock and sell the same for the owners or in some instances buy for breeders or for those engaged in the fattening of live stock. To conduct the business of the petitioners; skilled and experienced salesmen are required. Yardmen, stenographers, and office workers perform skilled manual labor or difficult clerical duties. Reference is made to paragraphs 45 to 71, both inclusive, of the Secretary's Proceedings, Findings of Fact, Conclusion and Order (Exhibit C hereto) for the Secretary's findings and discussion of the services rendered by the petitioners.

(15) The petitioners are either individuals, partnerships or corporations. In the case of the latter they are not the ordinary corporations with a great plurality of owners and absentee stockholders, but like the individual and partnership concerns, the owners are the directing heads and themselves render the services of buying and selling; advise customers as to matters of policy in purchasing, feeding and selling; prepare market reports, and travel among their clients. Primarily the income of the petitioners, whether individuals, partnerships, or corporations is dependent upon and ascribed to the personal activities of the owners.

(16) The selling of live stock on a commission basis requires skill and judgment in the evaluation of price factors, and in the grading and classification of live stock. Knowledge of market conditions, of supply and demand, and the ability to exercise a judgment as to trends and future con- [fol. 17] ditions are essential. The salesmen of the petitioners, and the petitioners themselves, as entrepreneurs, render services which are essentially personal and professional.

(17) The amount of capital invested and employed by petitioners in their respective businesses, while small, consists mainly in investments of furniture and equipment; and the business is essentially a cash one. Nevertheless, the market agencies must give large bonds, as required by statutes and regulations of the Secretary. The bonding companies require the personal guarantee of the stockholders or owners.

(18) The principal item of cost of the petitioners' respective businesses is that of salesmens' salary and/or commissions. Salesmen, because of the personal and professional character of their services, because of the skill and judgment required of them, and because of clientele following which they possess, demand and are entitled to compensation commensurate with the nature of their skill, judgment, responsibilities and services. Many of the petitioner-owners act as salesmen.

(19) The Chicago Livestock Exchange is a trade association maintained by the petitioners and other market agencies to promote the welfare of its members and to promulgate and enforce rules and practices.

(20) The service and business of the market agencies at Chicago Union Stock Yards is a highly competitive one. The petitioners do not enjoy a monopoly. Any shipper may avail himself either of the services of the petitioners, known as "old line" commission firms, or of co-operative commission agencies. In addition, the shipper or producer may, if he desires, offer his live stock for sale in person, the facilities of the market center for receiving, caring for and making delivery of live stock being available to him. Many and increasing sales and volume of sales are made by the [fol. 18] shippers and producers directly to meat packers who send agents to the live stock raising areas for the purpose of buying cattle, calves, sheep and hogs. There are at least six other central stockyards and live stock markets and innumerable packer concentration stations in the Middle West. The producer and shipper is thus offered a choice of methods of selling his live stock and the compensation that he shall pay therefor.

(21) The petitioners must at all times and during any market day of the year be ready to convert arriving live stock into cash, and on the same or the following day to pay the producer or shipper for his consignment. It is, therefore, necessary that the petitioners acting as salesmen or managers, or their employed salesmen, their yardmen and clerical staffs be on duty continuously, regardless of seasonal changes in business, changes in volume on account of weather, market conditions, or any other factor. Salesmen particularly must be employed by the year. The business of the petitioners is not and cannot be adapted to nor conducted as a piece-work business in the calculation of costs or in the hiring of employees.

III

(22) The said Order and said Supplemental Order finds and concludes (Par. 168) that the petitioners' rates and charges adopted in 1923 upon arbitration, and approved by the then Secretary of Agriculture, and since that time continuously in effect, are unreasonable and unjustly discriminatory. A tariff of rates held by the Secretary to be "just and reasonable" is then scheduled. Said Order and said Supplemental Order and the schedule of rates, charges and practices therein and thereby prescribed is and are null and void and unlawful. Said prescribed tariff of rates,

charges and practices is unreasonable, unjust and dis-
[fol. 19] criminatory against the petitioners. Said rates, charges and practices of said schedule were unjustly, unreasonably, capriciously and arbitrarily determined; are contrary to the evidence and without evidence upon which they are purported to be based; and were unreasonably, arbitrarily and capriciously arrived at by the "guess" method rather than by any well-known and well-recognized statistical method or principle,—such as the median method, the modal method, the bulk-line method, the market average method, or percentage deviations from said methods.

(23) The conclusions and findings contained in said Order and in said Supplemental Order and the schedule of rates, charges, and practices purported to be based thereon are arbitrary, erroneous, and do not constitute a statement of just, reasonable, and nondiscriminatory rates and charges as required by said Packers and Stockyards Act, 1921, in that they are predicated upon findings of fact made without evidence and contrary to all the evidence in the record and in that said conclusions, findings, and schedule of rates, charges, and practices were arbitrarily, capriciously, and erroneously determined,—all because of the following particulars, among others:

(a) The rates, charges and practices prescribed by the said Order and said Supplemental Order were not based upon any well known or well recognized statistical method or principle such as the median method, the modal method, the bulk line method, the market average method or percentage deviations from said methods; but, on the contrary, were unreasonably, arbitrarily and capriciously evolved by guess and supposition. The findings of the Secretary as to reasonable costs set up a standard of efficiency and cost which, because of the conditions and factors obtaining in the business of the petitioners as set forth in Section II of this petition, cannot be attained or approximated. The reasonable costs which the Secretary finds as a basis for
[fol. 20] the rates prescribed by him as compared with well-recognized statistical methods of arriving at the same costs are shown in the following table, in which there is taken the cost per carload lots of single-ownership straight-species cars received by all Chicago Live Stock Exchange firms for the year 1932:

Costs Per Carload Lots of All Chicago Live Stock Exchange Firms, 1932

Straight Cars—Single Ownership

	Costs Found Reasonable by Secretary	Median Costs	Weighted average Costs	66-2/3% Bulk-Line Costs	No. of Firms Below Secretary's Costs	Aggregate No. of cars handled by such firms
Cattle and Calves	$11.41	$22.78	$20.76	$22.24	3 out of 95	130 out of 46,016
Hogs	11.99	17.64	17.57	18.91	3 out of 95	500 out of 14,400
Sheep	11.15	15.42	17.46	17.58	10 out of 67	56 out of 7,511

In the foregoing table, the reasonable costs found by the Secretary per head of the various species of live stock has been multiplied by the weighted average of the number of such species contained in a carload,—26.56 in the case of cattle and calves; 90.65 in the case of hogs; and 22.9 in the case of sheep, all as is shown by the evidence in the record. A straight car is one containing only a single species of live stock; single ownership means that each head in a carload is consigned by the same shipper. The costs given above for the sale of straight cars of single ownership are substantially less and such cars are more economically handled than arrivals in cars of plural ownership, mixed cars of single or plural ownership, or arrivals by motor truck.

(b) The Secretary had before him no cost figures whatever covering calves alone, but only cattle and calves; yet he arbitrarily and unreasonably made a separate schedule of rates and charges for calves and a separate schedule of rates and charges for cattle.

(c) The Secretary found that the reasonable cost of salesmanship in selling cattle and calves was 16.67 cents. In making such finding, the Secretary arbitrarily and erroneously, and without foundation, set up a supersalesman, gave no consideration to the skill, judgment and experience which a salesman must possess, and failed to consider that [fol. 21] salesmen must be employed by the year and that enough salesmen must be employed at all times to meet peak market days. In 1932, the actual average cost of salesmen's salaries to the petitioners for the sale per head of cattle and calves was 40.23 cents. In the case of hogs, the salesmanship salary found to be reasonable by the Secretary was 4.14 cents. The actual average cost in 1932 to the petitioners was 9.3 cents. In the case of sheep, the comparison is as 1.48 cents is to 3.5 cents. The same unreasonableness and arbitrariness obtains as to every item of cost and as to every species of live stock sold.

(d) The Secretary classified cattle and swine into grades dependent upon weight, and prescribed rates and charges for each weight classification. Such classification and graduation is arbitrary and unreasonable, and without foundation in the record, and without evidence to show that a variation in weight causes a difference in the costs of selling or other necessary handling and service.

(e) The Secretary arbitrarily and unreasonably and without consideration of the record based his rates and charges for the selling of live stock upon the consignment basis rather than upon the draft basis. Sales of live stock are made by drafts, the number of animals in one consignment going over the scales at one time. One consignment may and frequently does consist of several drafts, thereby materially and substantially increasing costs and charges, which increased costs and charges are not recognized by said Order and Supplemental Order and were disregarded in the making of the same.

(f) The schedule of rates and charges of said Order and said Supplemental Order is arbitrary and unreasonable in that there is no showing in the record and no foundation to show that there is or would be a sufficient volume of business in the sale of consignments in small package brackets to equalize losses in large package brackets.

[fol. 22] (g) The Secretary arbitrarily and unreasonably and without evidence and against the evidence, found that it is reasonable to associate a salesmanship performance of 27,000 head or 1,000 cars of cattle and calves with a salary of $4500. The number of salesmen employed in 1932 in the selling of cattle and calves was 217, with an average annual salary in 1932 of $5,608.08. Their average performance during said year was 10,584 head per salesman. The actual average cost for salesmen in said year was 40.23 cents per head of cattle or calves compared with 16.67 cents found to be reasonable by the Secretary. According to the calculations and findings of the Secretary, the salesman at the said Chicago Stock Yards are but 39.2% efficient from a performance standpoint and receive $1108.08 on the average more than the salary considered reasonable by the Secretary if they had sold more than two and a half times as many cattle and calves as they did sell. Of the petitioner's selling cattle and calves, only two had an average selling by salesmen as high as that required for efficiency by the Secretary. These two petitioners paid an average salesmen's salary of $7,989.49 as against $4500.00 considered reasonable by the Secretary.

(h) The findings, conclusions and charges of the Secretary are arbitrary and unreasonable in that the consid-

eration of the cost experience of only two years is insufficient to justify the findings, conclusions, rates and charges made and fixed.

(i) The findings, conclusions, rates, charges and practices made and prescribed in said Order and said Supplemental Order are arbitrary and unreasonable in that the record does not disclose any evidence of wasteful, extravagant, unnecessary or exorbitant expenses; but on the contrary, shows that the petitioners were and are cautious and acted upon sound business judgment in incurring expenses and costs.

(j) The Secretary gave no consideration to the fact that buyers of live stock representing meat packers are highly [fol. 23] skilled and highly paid experts and that live stock growers must be equally well represented on the selling market in order that the best prices possible may be obtained for their produce, and that live stock buyers representing meat packers receive on the average higher salaries than those paid the salesmen of the petitioners.

(k) No finding and no rate has been provided by the Secretary for handling "seconds" other than the rate for the handling of fresh cattle, calves, hogs and sheep. It has been customary on the Chicago market to charge approximately one-half the rate where live stock is resold on the market. The costs indicate that the service rendered is less expensive in the case of "seconds" than in the case of fresh live stock.

(l) The Secretary arbitrarily and unreasonably considered reimbursement to cover management and to cover uninsurable risks to be profit. These items should have been included and classified as operating expenses. The findings thus made by the Secretary do not purport to allow to the entrepreneur salesmen and managers any pure profit whatsoever. The Secretary gave undue consideration to the element of cost.

(m) The rates, charges, and practices prescribed by said Order and said Supplemental Order are unreasonable and arbitrary and unreasonably and arbitrarily arrived at since if said rates, charges and practices are put into effect and enforced, it will require the petitioners to operate their respective businesses at less than cost.

(n) The Secretary arbitrarily and unreasonably denied the petitioners' petition for rehearing and amended petition for rehearing, wherein the petitioners sought to show, among other things, that under the present rates, losses are incurred, to-wit, $298,536 in 1932 and that the proposed rates would cause a further reduction in income of 25.47%.

(o) The Secretary arbitrarily and unreasonably failed to take into account and to give heed to changed economic conditions, diminishing volume of live stock receipts, and increased percentage of direct consignments to packers.

[fol. 24] (p) The Secretary arbitrarily and unreasonably and without evidence in the record, and contrary to fact, prescribed in said Order and said Supplemental Order a different rate per head for the sale of consignments of varying sizes. The Secretary arbitrarily and unreasonably refused proffer of evidence as to the time and cost elements in selling and in handling varying size packages for sale.

(q) The said Order and said Supplemental Order do not take into consideration the increased costs of selling and handling of consignments of plural ownership or consignments of carlots of mixed species or both. The findings, rates, charges, and practices prescribed by said Order and said Supplemental Order are arbitrary and unreasonable and were arbitrarily and unreasonably arrived at because no principle, rule or method was used in determining items of cost, total costs or rates, or unit costs and unit rates. Instead of following a very specific statistical method or procedure of experience, the Secretary has arbitrarily and unreasonably and capriciously imposed his personal approximations and suppositions endeavoring to reduce and regulate the businesses of the petitioners to a standard of proficiency and efficiency not obtained or obtainable.

(r) The Secretary acted arbitrarily and unreasonably and beyond the scope of the authority vested in him by the Packers and Stockyards Act of 1921 in that his findings as to reasonable costs and as to each item thereof and rates based thereon are, in effect, a management of the business of the petitioners and the imposition of the personal judgment of the Secretary for that of the owners and managers of the petitioners and an attempt legis-

latively to revise rather than administratively to regulate an industry.

[fol. 25] IV

(24) The present rates, charges and practices of the petitioners were fixed and determined as fair and reasonable pursuant to the arbitration agreement hereinbefore referred to and attached hereto as Exhibit "A". The said rates and charges appear in the arbitration award attached hereto as Exhibit "B". Said rates, charges and practices were approved by the then Secretary of Agriculture and have, since their going into effect on September 15, 1923, remained continuously in effect without substantial amendment or modification.

(25) The present rates, charges and practices of the petitioners, prescribed and adopted by said arbitration award of 1923, and approved by the then Secretary of Agriculture, have not, during the ten or more years during which said rates, charges and practices have been in effect, been wholly confiscatory. Nevertheless, during the years 1932 and 1933 substantially all of the petitioners have conducted their respective businesses at a loss. For the year 1932, the aggregate actual selling costs of the petitioners exceeded the actual selling commissions for the same period by almost $300,000. The respective businesses of the petitioners have been and are conducted efficiently and economically during all of the times herein referred to; and since 1931 material reductions in salaries and other substantial economies have been made.

(26) The present rates and charges of the petitioners, as aforesaid, are not in excess of fair and reasonable rates, and the said rates and charges and all rules, regulations or practices affecting the same, or permitting the rendering of any stockyard service without making a lawful charge therefor, are lawful, fair and not discriminatory.

(27) The rates, charges and practices prescribed by said Order and said Supplemental Order, if permitted to be- [fol. 26] come effective, and if enforced, will deprive the petitioners of their property and business without due process of law, and will deny to the petitioners the equal protection of the laws in violation of their rights under the Constitution of the United States in the following particulars, among others:

(a) The gross, actual and aggregate selling commissions of the petitioners in 1932 were $298,536 less than the actual and aggregate selling costs of the petitioners for the same period. The actual and aggregate selling costs amounted to $3,122,908, while the gross, actual and aggregate selling commissions amounted to $2,824,372. Had the rates, charges and practices prescribed by said Order and said Supplemental Order been in effect during the year 1932, the gross, actual and aggregate selling commissions would have amounted to $2,105,035 as against the cost figure of $3,122,908, resulting in an aggregate loss to the petitioners of $1,017,873, thereby increasing the aggregate losses actually suffered by the petitioners by the sum of $719,337.

(b) Under the present effective rates prescribed by the said arbitration award as aforesaid, the petitioners in 1932 made an aggregate profit in the sale of sheep of $9,814. During the same period the aggregate loss of the petitioners in the sale of hogs was $2,401, and in the sale of cattle and calves $305,949. Under the confiscatory rates, charges and practices prescribed by the Secretary under the said Order and Supplemental Order, the aggregate losses of petitioners in respect to the sale of cattle and calves, if said rates were applied to the 1932 business of the petitioners, would be increased by $421,684, the losses in respect to hogs would have been increased $256,350; and the profit of $9,814 upon the aggregate and actual selling costs of the petitioners of $220,543 in respect to sheep would have been changed into an aggregate loss of $31,489.

(c) The rates, charges and practices prescribed by said Order and said Supplemental Order, if applied to the ag-
[fol. 27] gregate business of the petitioners in 1932, would have caused a reduction of 25.47% in the gross actual selling commissions for that year and would have resulted in a loss of 32.59% compared with the loss of 9.56% actually suffered by the rates now and in 1932 in force.

(d) The actual aggregate selling cost figures and conclusions based thereon, recited in the preceding sub-paragraphs numbered (a) to (c), inclusive, are the costs as figured by the petitioners. The Secretary, in his said Order and said Supplemental Order, holds and finds said costs to be unreasonably high. The record before said Secretary, upon which his Proceedings, Findings of Fact, Conclusion and

Order of January 8, 1934, and his Supplemental Order of March 12, 1934, purport to be based, shows that the costs figured by the Secretary to be reasonable would have been $1,461,394 less in 1932 than the actual and aggregate cost for 1932 of $3,122,908, as calculated by the petitioners. Upon the basis of cost considered reasonable by the Secretary, the petitioners in 1932 are deemed to have operated their businesses at twice the necessary cost.

(e) The rates and charges ordered into effect by said Order and said Supplemental Order are individually and severally confiscatory as applied separately to cattle and calves, swine, and sheep or goats; and each and all of said rates will fail to yield to the petitioners and to each petitioner a fair and compensatory return for stockyard services rendered by the petitioners and by each petitioner, or a return commensurate with the value of the services rendered; and will not reimburse to the petitioners the actual operating expenses nor the expenses held to be reasonable by the Secretary, incurred in the rendition of such services.

(f) The rates, charges and practices prescribed by said Order and said Supplemental Order are upon the consignment basis, a consignment, for the purpose of assessing sell- [fol. 28] ing charges, being defined as all the live stock of one species delivered in the name of one person, to one market agency, to be offered for sale during the trading hours of one day. Said Order and said Supplemental Order are confiscatory in that the rates and charges are not founded upon the draft basis, draft being defined in said Order and said Supplemental Order as all those animals in one consignment weighed as a single sales classification. Sales of live stock are made by drafts, and one consignment may consist of several drafts, thereby materially and substantially increasing costs and charges, which increased costs and charges are not recognized by said Order and said Supplemental Order.

(g) The arbitrary, capricious and unreasonable action of the Secretary in denying the petition and supplemental petition for re-hearing, wherein the petitioners sought to show that the rates, charges and practices prescribed by said Order and said Supplemental Order would leave to the petitioners the alternative of conducting their respective businesses at a loss, of going out of business, or of subjecting

themselves to heavy penalties and forfeitures, was a confiscation and deprivation of the property and businesses of the petitioners, severally and individually, without due process of law.

(h) The confiscatory effect of the schedule of rates, charges and practices prescribed by said Order and said Supplemental Order if presently applied to the business of the petitioners will be further enhanced by reason of the reduction in the gross revenue of the petitioners due to the diminution in volume of business handled. From 1923 to 1932 the number of head of cattle received at the Chicago Union Stock Yards decreased by over 1,000,000 head; calves decreased in volume almost 300,000 head; hogs, over 5,000,000 head; and sheep substantially 1,000,000 head. Decreases in volume have been most marked in the more recent years; and because of the policy of the present Federal [fol. 29] Administration to curtail production, particularly exemplified in the Corn-Hog Control program, volume of live stock arriving at the Chicago Yards is decreasing at an accelerated rate.

(i) The petitioners and other market agencies are required by Packers and Stockyards Act of 1921 and by regulation of the Secretary thereunder to post bonds for the protection of their customers. The surety companies issuing said bonds require collateral. If the rates, charges, and practices prescribed by said Order and said Supplemental Order are put into effect and enforced, the petitioners reasonably fear that the said surety companies will cancel their said bonds because of the losses suffered by the petitioners due to the said prescribed confiscatory rates. The petitioners will then be compelled to go out of business. During the last twelve months bonds of several market agencies at the Chicago Union Stock Yards have been cancelled because the bonding companies have asserted that the losses sustained by the insured agencies in the conduct of their respective businesses made the collateral insecure.

(j) The rates, charges and practices prescribed by said Order and said Supplemental Order do not consider nor take into account the personal and professional skill, judgment, and services rendered and required of salesmen and of the entrepreneur petitioners, whether individual, partnership or corporation; and said rates, charges and prac-

tices, will not permit adequate and commensurate salaries and rewards as items of cost in the conducting of the respective businesses of the petitioners.

(k) The confiscatory effect of the said rates, charges and practices prescribed by said Order and said Supplemental Order if put into effect and enforced and applied to the businesses of the petitioners will be further enhanced by reason of reduction in the percentage of consignments arriving by rail and by the increase in the consignments or heads arriv- [fol. 30] ing by motor truck. Because of the smaller draft and increase in per head sales on truck deliveries, cost on the latter deliveries to the petitioners are increased. To this increasing cost factor the Secretary does not give consideration or adequate consideration. Since 1923 truck deliveries have increased in the case of cattle from almost nothing to 15% of total cattle deliveries. In the case of calves, the percentage has increased from 6/10 of 1% to 22%; in the case of hogs from 6/10 of 1% to 25%; and in the case of sheep from 1/10 of 1% to approximately 10%.

(l) The arbitrary classification of live stock prescribed by said Order and said Supplemental Order is confiscatory in that variations in weight upon which the prescribed rates and charges are graduated is without foundation and is without relation to the cost of service. For instance a variation of one pound in the average weight of a consignment of steers will cause, according to the prescribed rate, a difference of 15c per head commission for the sale of such a consignment of steers, but the cost of selling will not vary.

(m) The Secretary found that the reasonable cost of selling calves was 42 plus cents per head. The commissions prescribed for selling calves are largely below that amount, particularly in the larger package brackets; and there is no evidence in the record to show that the petitioners will do enough business in the one small package bracket, wherein the commissions are greater than the reasonable costs found by the Secretary, to make up for the less-than-cost rate set for the large package brackets.

(n) In every case, in every instance for every species of live stock, the reasonable total costs found by the Secretary are less than the actual total costs of the petitioners in conducting their businesses. Specifically, for instance, the Secretary found that the reasonable costs for the sale per head

[fol. 31] of cattle and calves is 42.97 cents; whereas the petitioner whose business is conducted more economically than any of the other petitioning firms entailed an actual cost of 57.91 cents per head in the sale of cattle and calves; and the average of all petitioners, as shown by the record, was a total actual cost of 83.24 cents per head in the sale of cattle and calves. The total of all items of cost of the petitioner whose business is conducted more economically than that of any other petitioner exceeded the total reasonable cost as found by the Secretary by almost 15 cents per head of cattle and calves; and the average total of all items of cost of all of the petitioners in the sale per head of cattle and calves is twice the total reasonable cost as found by the Secretary.

In the case of hogs, the total reasonable cost found by the Secretary was 13.23 cents, whereas the total actual cost of all the petitioners was 23.27 cents. In the case of sheep, the comparison is 4.85 cents to 9.17 cents. The profit allowed and considered reasonable by the Secretary is 3.9 cents per head in the case of cattle and calves; 1.4 cents per head in the case of hogs and .55 cents; so that in no case does the reasonable cost, plus the reasonable profit allowed by the Secretary even approach the actual cost of the petitioners.

(o) The confiscatory effect of said rates, charges and practices prescribed by said Order and said Supplemental Order, if put into effect and enforced and applied to the businesses of the petitioners, will be further enhanced by reason of the accelerating reduction in the amount of livestock which finds its way to the Chicago Union Stock Yards, as compared with other central markets. In ten years the percentage of cattle and calves handled by Chicago market agencies has steadily and consistently diminished from 42.4% of the cattle and calves handled in 1923 at the seven central stockyards of the Middle-West to 88% in 1932. In the case of hogs for the same period and making the same comparison, the decrease has been from 53.5% to 42.2%; [fol. 32] and in the case of sheep, the diminution has been from 39.1% to 29%. This steady diminution in volume at the Chicago yards, as compared with the six other central yards, over the ten-year period, has established a trend which there is no reason to believe will be changed or checked, and which diminishing trend in volume of business the Secretary failed to consider or to adequately consider.

(p) The confiscatory effect of the schedule of rates, charges and practices prescribed by said Order and said Supplemental Order, if applied to the businesses of the petitioners, would be further enhanced because of the increase of direct shipments of live stock without intervention of market agencies to meat packers. The direct receipt of hogs by the packers in 1923 amount to 4.56% of the total hogs received at the Chicago yards. This percentage steadily and rapidly increased until in 1932 it amounted to 34.15%. During the same period the total directly consigned sheep receipts rose from 13.52% to 29.09%. The increase as to calves is from 6.81% in 1923 to 8.87% in 1932. In the case of cattle, direct consignments to packers has decreased from 2.46% in 1923 to 1.96% in 1932. The Secretary failed to consider and to adequately take into account the diminishing volume of business done by the petitioners because of the steadily increasing and established trend of direct consignments to the meat packers.

(28) By reason of each and all of the facts alleged in the foregoing paragraphs, the petitioners aver that the said Order and Supplemental Order and the action and cause of action taken by the Secretary are without warrant and authority of law. By reason thereof the petitioners, and each of them, will, if the said Order and said Supplemental Order are put in effect and enforced, be deprived of their property and their business confiscated without due process of law under the Constitution and laws of the United States.

[fol. 33] V

(29) The Secretary erroneously, improperly, arbitrarily, and unreasonably overruled and denied the petition for rehearing filed February 7, 1934, wherein the petitioners alleged in substance, among other things, that the schedule of rates and charges prescribed by the Secretary's Order would cause reductions in revenues which would make it impossible for the petitioners to pay necessary operating expenses; that the schedule of rates and charges of said Order of January 8, 1934, were not related to the cost of rendering service with respect to the different species and classifications; that the prescribed rates were not consistent with the level or with the trend of cost; that under the rates and charges in effect during 1933, substantially all of the petitioners had operated at a loss; and that the rates

prescribed would necessitate throwing out of employment a large number of people.

(30) The Secretary erroneously, arbitrarily, and unreasonably, overruled and denied the amended petition for rehearing filed April 9, 1934, wherein the petitioners alleged, among other things, that the rates and charges prescribed in said Order and said Supplemental Order would create a net reduction of 25% of gross income as compared with the income derived from the rates then and now in force, declared to be unreasonable; that such reduction in income would be confiscatory because the prescribed rates would not produce income sufficient to pay the usual and necessary costs of doing business; that economic changes of far-reaching character had occurred adversely affecting the market agencies at Chicago; and that there was drastic reduction in the production and marketing of live stock.

[fol. 34] VI

(31) Failure on the part of petitioners to comply with the purported Order of January 8, 1934 and the purported Supplemental Order of March 12, 1934, renders the petitioners subject to prosecution and to liability for heavy penalties and forfeitures as against which liabilities the petitioners will have no adequate protection at law, but may be subjected to multifarious and vexatious suits for reparation on the part of various shippers of live stock. Should the petitioners, under duress, attempt to avoid liability and publish and establish the rates specified in said purported Order, the petitioners will be permitted by law to collect only such rates which, as alleged, are not sufficient to pay the necessary expenses of conducting business, but will result in losses in excess of $1,000,000; and if later it should be determined that said purported Orders are null and void, the petitioners will be without means of collecting the difference between the rates, charges and practices prescribed in said Orders and the present rates without multifarious suits and actions at law, impractical in character, and extending to most of the states of the Union, against those shippers to whom the prescribed reductions apply. The petitioners will, therefore, unless the said purported orders are suspended, enjoined, set aside and annulled; and unless, pending final determination, said purported Orders are not temporarily stayed and suspended, suffer irreparable in-

jury for which no adequate remedy or protection exists at law.

(32) If, pending final determination, a temporary stay or suspension of the operation of said purported Orders or an interlocutory injunction suspending the enforcement, operation or execution thereof is granted only upon the condition that there be impounded with the Court the difference in commissions under the existing rates and the rates pre- [fol. 35] scribed in said purported Orders, the petitioners will be unable to continue in business because the gross revenues produced by the rates prescribed in said purported Orders will not produce sufficient commissions or income to meet either actual operating costs or operating costs held and deemed by the Secretary to be reasonable. The business of the petitioners is one with small capital investment and without surplus capital and the only way the petitioners could meet the demands of such impounding order would be to deposit from their personal funds and savings, if sufficient the difference between the two rates.

Wherefore petitioners pray:

1. That process issued immediately out of and under the seal of this Court, directed to said defendants, the United States of America, Harry A. Wallace, Secretary of Agriculture of the United States of America, Homer S. Cummings, Attorney General of the United States of America, and Dwight H. Green, United States District Attorney for the Northern District of Illinois, Eastern Division, requiring said defendants, and each of them, on a day certain to be specified in said process, to be and appear before this Court and to answer this Petition and Bill, but not under oath, answer under oath being hereby expressly waived.

2. That this Court or a Court constituted as required by the laws of the United States, be convened and that said Court so constituted and convened, shall hear this Petition and Bill and all motions, petitions, proceedings or hearings properly arising therefrom or thereunder.

3. That upon the filing of this Petition and Bill, a Judge of this Court shall call to his assistance two other Judges, one of whom shall be a Circuit Judge, and upon proper notice to the defendants, said Judges shall enter an order of this Court allowing a temporary stay or suspension of the

operation of said Order and said Supplemental Order, including in the order allowing such temporary stay or sus- [fol. 36] pension, a finding that irreparable damage would result to the petitioners but for said order and specifying the nature of the damage; and that after proper notice to the defendants, the petitioners herein may be granted an interlocutory injunction suspending or restraining the enforcement, operation or execution of said purported Order and Supplemental Order.

4. That this Court, upon final hearing of this suit, enter a decree herein permanently suspending, enjoining, setting aside and annulling said purported Order and Supplemental Order.

5. That the petitioners have and recover of the defendants the proper costs of this suit.

6. That the petitioners have such other and further relief in the premises as may to the Court be deemed just and equitable.

Alan F. Wilson, for the Petitioner, John Clay, Frank H. Connor, Alan F. Wilson, and Chas. G. Smith, a Partnership, Doing Business as John Clay & Company. Geo. I. Haight, John S. Boyd, M. K. Hobbs, Solicitors for all Petitioners.

[fol. 37] *Duly sworn to by Alan F. Wilson and John S. Boyd. Jurat omitted in printing.*

[fol. 38] EXHIBIT A TO PETITION AND COMPLAINT

Arbitration Agreement

[fol. 39] Pending before the Secretary of Agriculture

Docket No. 14

AMERICAN NATIONAL LIVE STOCK ASSOCIATION et al.

vs.

CHICAGO LIVE STOCK EXCHANGE et al.

Stipulation

It is hereby agreed between the complainants in the above entitled complaint and The Chicago Live Stock Exchange

and all market agencies, members thereof, who are made defendants to said complaint, as follows:

1. In lieu of the formal procedure and hearing provided for by the Packers and Stock Yards Act, 1921, for the consideration and determination of the charges made in said complaint by the American National Live Stock Association and others against The Chicago Live Stock Exchange and others, the entire subject matter and charges in said complaint contained shall be investigated by G. N. Dagger in charge of the Division of Rates and Charges of said Packers and Stock Yards Administration and Howard M. Gore in charge of the Trade Practice Division of said Packers and Stock Yards Administration, with full authority in said G. N. Dagger and Howard M. Gore, as arbitrators, to finally adjust and determine the issue raised by said complainants in their complaint against said Chicago Live Stock Exchange and the market agencies at the Chicago market.

2. Upon the signing of this stipulation by the parties hereto, the schedules of rates and charges now on file with said Packers and Stock Yards Administration shall remain in effect until the decision of said arbitrators is approved by the Secretary of Agriculture, and none of the parties hereto shall take any action in respect to the matters charged and referred to in said complaint pending the determination thereof by said arbitrators, for the purpose of concluding the proceedings instituted by the complainants.

3. In performing their duties as such arbitrators, said G. N. Dagger and Howard M. Gore shall proceed in such manner and by such means as they deem necessary and proper and shall be extended by the complainants and these [fol. 40] defendants all facilities and given all information as they may request and as in their judgment is necessary for the proper discharge of their duties as such arbitrators and to enable them to fairly determine what shall be regarded as just and reasonable practices and schedules of rates and commission charges in the live stock commission business at the Chicago market.

4. It is understood that the decision of such arbitrators upon the matters herein referred to shall be binding upon, and shall be accepted by all of the parties to the complaint, and that the rates and charges and practices found

to be just and reasonable by said arbitrators and recommended by them shall be adopted by said Chicago Live Stock Exchange and the members thereof, upon approval by the Secretary of Agriculture, and shall be made effective to the same extent and as fully as if such decision and recommendations had been arrived at by the Secretary of Agriculture as the result of a formal hearing in accordance with the procedure provided by said Packers and Stock Yards Act, 1921.

5. The practices and rates and charges found to be just and reasonable by said arbitrators and recommended by them for adoption, if approved by the Secretary of Agriculture, shall be adopted by all of the market agencies at the Chicago market and enforced by the Packers and Stock Yards Administration.

6. No publicity shall be given to the information gathered by said arbitrators by either the complainants or the defendants herein, and no public statements or interviews with respect thereto given out, unless by authority or direction of said arbitrators.

7. That this stipulation shall be executed in quadruplicate and one copy given to each of the following:

(a) The Chief of the Packers and Stock Yards Administration.

(b) Messrs. G. N. Dagger and Howard M. Gore, the arbitrators.

(c) The duly authorized representative of the complainants.

(d) The President of The Chicago Live Stock Exchange.

8. The investigation by the arbitrators herein shall commence as soon as conveniently possible after the execution [fol. 41] of this stipulation and shall be concluded within such reasonable time as the circumstances will permit.

9. The recommendations, conclusions and decisions of said arbitrators shall be reduced to writing and a copy thereof filed with the Packers and Stockyards Administration and a copy thereof delivered to the representative of the complainants and the President of The Chicago Live Stock Exchange. Such recommendations as to practices, rates and schedules of commission charges and otherwise,

as may be contained in said decision and report, when approved by the Secretary of Agriculture, shall be adopted by said Chicago Live Stock Exchange and the market agencies at the Chicago market and made effective as soon as conveniently possible after the receipt by the president of The Chicago Live Stock Exchange of said report of the arbitrators, or at such time as shall be directed by said arbitrators.

American National Live Stock Association, by T. W. Tomlinson, Secy., Their Duly Authorized Representative. National Wool Growers' Association, by F. R. Marshall, Secretary, Their Duly Authorized Representative. Arizona Cattle Growers' Association, Arizona Wool Growers' Association, California Cattlemen's Association, Corn Belt Meat Producers' Association, Idaho Cattle and Horse Growers' Association, Montana Stock Growers' Association, Nebraska Stock Growers' Association, Nevada Land and Live Stock Association, New Mexico Cattle and Horse Growers' Ass'n, Oregon Cattle and Horse Raisers' Association, Texas and Southwestern Cattle Raisers' Ass'n, Utah Cattle and Horse Growers' Association, Wyoming Stock Growers' Association, by T. W. Tomlinson, Their Duly Authorized Representative. The Chicago Live Stock Exchange, by S. B. Stafford, Its President.

Approved: Packers and Stock Yards Administration, by Chester Morrill, Assistant to the Secretary.

[fol. 42] The foregoing stipulation was approved by the members of The Chicago Live Stock Exchange and the President of said Exchange duly authorized to enter into the same by a resolution duly adopted this 9th day of January, 1923, by the members of said Chicago Live Stock Exchange at a meeting called for the purpose of considering the same, and made a matter of record in the minutes of said meeting.

E. M. Hughes, Secretary, The Chicago Live Stock Exchange.

The foregoing stipulation has been submitted to and approved by the duly accredited representatives of American National Live Stock Association, National Wool Growers' Association, Arizona Cattle Growers' Association, Arizona Wool Growers' Association, California Cattlemen's Association, Corn Belt Meat Producers' Association, Idaho Cattle and Horse Growers' Association, Montana Stock Growers' Association, Nebraska Stock Growers' Association, Nevada Land and Live Stock Association, New Mexico Cattle and Horse Growers' Association, Oregon Cattle and Horse Raisers' Association, Texas and Southwestern Cattle Raisers' Association, Utah Cattle and Horse Growers' Association and Wyoming Stock Growers' Association.

T. W. Tomlinson, Secy.

The undersigned agree to act as arbitrators under and pursuant to the terms and conditions stated in the above stipulation.

Howard M. Gore. G. N. Dagger.

[fol. 43] EXHIBIT B TO PETITION AND COMPLAINT

Arbitration Award, 1923

[fol. 44] United States Department of Agriculture

Packers and Stockyards Administration

Washington, D. C.

July 31, 1923.

The Honorable the Secretary of Agriculture.

SIR:

We submit, herewith, the report and the award of the arbitrators in Docket Nos. 11, 12, 13 and 14.

(Signed) G. N. Dagger. (Signed) Howard M. Gore.

[fol. 45] Docket Nos. 11, 12, 13 and 14

AMERICAN NATIONAL LIVE STOCK ASSOCIATION, NATIONAL WOOL GROWERS' ASSOCIATION, Arizona Cattle Growers' Association, Arizona Wool Growers' Association, California Cattlemen's Association, Corn Belt Meat Producers' Association, Idaho Cattle and Horse Growers' Association, Montana Stock Growers' Association, Nebraska Stock Growers' Association, Nevada Land and Live Stock Association, New Mexico Cattle and Horse Growers' Association, Oregon Cattle and Horse Raisers' Association, Texas and Southwestern Cattle Raisers' Association, Utah Cattle and Horse Growers' Association, Wyoming Stock Growers' Association, Complainants,

v.

THE CHICAGO LIVE STOCK EXCHANGE, THE KANSAS CITY LIVE STOCK EXCHANGE, The Omaha Live Stock Exchange, the St. Paul Live Stock Exchange, The Portland Live Stock Exchange; and Those Market Agencies Operating at the Stockyards at Chicago, Ill.; Kansas City, Mo.; Omaha, Neb.; St. Paul, Minn.; Portland, Ore.; and Fort Worth, Texas, that have Registered With the Secretary of Agriculture under Section 303 of the Packers and Stockyards Act, 1921, Defendants

Report and Award of the Arbitrators Recommended to the Secretary of Agriculture

A formal complaint was filed with the Secretary of Agriculture on July 25th, 1922, under Title III of the Packers and Stockyards Act, 1921. This complaint alleges, among [fol. 46] other things, that the commission charges assessed and collected by the market agencies for selling livestock at the stockyards located at Kansas City, Mo., So. Omaha, Neb., So. St. Paul, Minn. and Chicago, Ill. are unjust, unreasonable and discriminatory.

Before a date of hearing was ordered on this complaint, a conference was held between the representatives of the market agencies at the Kansas City market and representatives of the American National Livestock Association, Kansas Livestock Association, Missouri Livestock Association, Texas and Southwestern Cattle Raisers' Association, and other livestock organizations tributary to that market.

This conference resulted in a proposal to the Secretary that the issues in dispute be settled by arbitration. The conference nominated arbitrators for the consideration of the Secretary in connection with this proposal. The proposed plan was approved by the Secretary of Agriculture. All parties to the proceedings and participants in the conferences in relation thereto, with the approval and consent of the Secretary, joined in an invitation to those nominated by them to act in the capacity of arbitrators under the following stipulation:

In conference in regard to the matter of rates, charges, regulations, and practices now in force at the Kansas City market, it is proposed that all questions in regard to the above subject matter shall be submitted for adjustment to G. N. Dagger, Charge of the Division of Rates and Charges, and Howard M. Gore, Charge of Trade Practice Division, Packers and Stockyards Administration, and it is agreed that their decision shall be accepted and made a part of the conference report, the same to be made effective by the Kansas City Live Stock Exchange upon approval by the Secretary of Agriculture. In performance of these duties, G. N. Dagger and Howard M. Gore may proceed in such manner and by such means as they deem necessary, and shall be afforded such facilities and information as they may require for the proper discharge of their duties. And in order to effectuate the results of this conference, it is understood that the representatives of the commission men market agencies, the American National Live Stock Association, the National Wool Growers' Association and the producers' organizations, namely: Kansas State Live Stock Association, Texas and South Western Cattle Rais-[fol. 47] ers' Association, Missouri Live Stock Association and representatives of Oklahoma Live Stock Producers participating in this conference will approve this stipulation.

The persons chosen and named in the stipulations accepted the invitation to act as arbitrators and entered upon their duties as such. The arbitrators were aware that the tasks to be undertaken were in the nature of pioneer work and the complex character of the problems presented would necessitate extensive research and study. It was the opinion of the arbitrators that the problem could best be ap-

proached by informal conferences and hearings with the representatives of the producers and shippers and with the market agencies engaged in business at the market under consideration. It was the further belief of the arbitrators that the Auditing Division of the Packers and Stockyards Administration should make an examination of the records of these market agencies and report the facts developed to the arbitrators.

The arbitration plan of settling the questions at issue for St. Paul, Omaha and Chicago was adopted in January 1923. The complainants and respondents at Omaha and St. Paul adopted the form of the Kansas City stipulation. A separate stipulation was entered into for Chicago, which reads as follows:

It is hereby agreed between the complainants in the above entitled complaint and The Chicago Live Stock Exchange and all market agencies, members thereof, who are made defendants to said complaint, as follows:

1. In lieu of the formal procedure and hearing provided for by the Packers and Stockyards Act, 1921, for the consideration and determination of the charges made in said complaint by the American National Live Stock Association and others against The Chicago Live Stock Exchange and others, the entire subject matter and charges in said complaint contained shall be investigated by G. N. Dagger, in charge of the Division of Rates and Charges of said Packers and Stockyards Administration and Howard M. Gore in charge of the Trade Practice Division of said Packers and Stockyards Administration, with full authority in said G. N. Dagger and Howard M. Gore, as arbitrators, to finally adjust and determine the issue raised by said complainants in their complaint against said Chicago Live Stock Exchange and the market agencies at the Chicago market.

[fol. 48]. 2. Upon the signing of this stipulation by the parties hereto, the schedule of rates and charges now on file with said Packers and Stockyards Administration shall remain in effect until the decision of said arbitrators is approved by the Secretary of Agriculture, and none of the parties hereto shall take any action in respect to the matters charged and referred to in said complaint pending the determination thereof by said arbitrators, for the purpose

of concluding the proceedings instituted by the complainants.

3. In performing their duties as such arbitrators, said G. N. Dagger and Howard M. Gore shall proceed in such manner and by such means as they deem necessary and proper and shall be extended by the complainants and these defendants all facilities and given all information as they may request and as in their judgment is necessary for the proper discharge of their duties as such arbitrators and to enable them to fairly determine what shall be regarded as just and reasonable practices and schedules of rates and commission charges in the livestock commission business at the Chicago market.

4. It is understood that the decision of such arbitrators upon the matters herein referred to shall be binding upon, and shall be accepted by all of the parties to the complaint, and that the rates and charges and practices found to be just and reasonable by said arbitrators and recommended by them shall be adopted by said Chicago Live Stock Exchange and the members thereof, upon approval by the Secretary of Agriculture, and shall be made effective to the same extent and as fully as if such decision and recommendations had been arrived at by the Secretary of Agriculture as the result of a formal hearing in accordance with the procedure provided by said Packers and Stockyards Act, 1921.

5. The practices and rates and charges found to be just and reasonable by said arbitrators and recommended by them for adoption, if approved by the Secretary of Agriculture, shall be adopted by all of the market agencies at the Chicago market and enforced by the Packers and Stockyards Administration.

6. No publicity shall be given to the information gathered by said arbitrators by either the complainants or the defendants herein, and no public statements or interviews [fol. 49] with respect thereto given out, unless by authority or direction of said arbitrators.

7. That this stipulation shall be executed in quadruplicate and one copy given to each of the following:

(a) The Chief of the Packers and Stockyards Administration.

(b) Messrs. G. N. Dagger and Howard M. Gore, the arbitrators.

(c) The duly authorized representative of the complainants.

(d) The President of The Chicago Live Stock Exchange.

8. The investigation by the arbitrators herein shall commence as soon as conveniently possible after the execution of this stipulation and shall be concluded within such reasonable time as the circumstances will permit.

9. The recommendations, conclusions and decisions of said arbitrators shall be reduced to writing and a copy thereof filed with the Packers and Stockyards Administration and a copy thereof delivered to the representative of the complainants and the President of The Chicago Live Stock Exchange. Such recommendations as to practices, rates and schedules of commission charges and otherwise, as may be contained in said decision and report, when approved by the Secretary of Agriculture, shall be adopted by said Chicago Live Stock Exchange and the market agencies at the Chicago market and made effective as soon as conveniently possible after the receipt by the president of The Chicago Live Stock Exchange of said report of the arbitrators, or at such time as shall be directed by said arbitrators.

An informal public hearing was held in the Kansas City market during the week of October 30th, 1922. During the week of February 19th, 1923, an informal public hearing was had at St. Paul, Minn. The hearing at Chicago was held during the week beginning March 5th, 1923, which was resumed March 30th, 1923. The hearing at Omaha was held during the week beginning March 26th, 1923. These informal public hearings held by the arbitrators at the respective markets were widely announced and full opportunity was given to all interested parties to present information and suggestions bearing upon the reasonableness of the [fol. 50] present commission charges. Market agencies, individual producers and representatives of livestock organizations were present at all the hearings and submitted their views and recommendations to the arbitrators. Exhibits were submitted setting forth statistical data and other information bearing on the issues. A complete rec-

ord was made of these proceedings. An invitation was extended to those present at the hearings and all others interested to present to the arbitrators any facts which in their judgment merited consideration at any time before the making of the final award.

The arbitrators found it necessary to make extensive investigations and study on their own account in order to secure needed information. The Auditing Division of the Packers and Stockyards Administration made such audit of the books of all the market agencies at the four markets involved as the time at hand would permit and furnished information relative to the profits and losses for each firm for a period of time sufficient to indicate the state of the business. The Auditing Division also secured and furnished information in regard to the character of the receipts of the different classes of livestock at each of the markets. The plan followed in collecting information of this character was to select representative months to show the number of head per car, drafts per car, buyers per car, gross sales, weight per car, commission per car, and other expenses, and such other information as would be useful. Numerous conferences were held with officials of livestock exchanges, officials of livestock organizations, and other informed persons. A questionnaire was sent to each market agency which was designed to secure information bearing upon the volume of business handled during the year 1922, the number of employees engaged by each firm, the salary paid each, and such other information as would clearly disclose the nature of their organizations and their business operations.

In order to thoroughly familiarize themselves with local conditions prevailing at the several markets in question, the arbitrators made extensive personal investigations, spending considerable time in observing market transactions in the yards.

Various reports and letters bearing information and suggestions were received from individuals interested in commission rates. The information submitted by the interested parties, as well as information secured in other ways, [fol. 51] has been carefully reviewed. All the documents, letters, and other papers submitted, including the record of the hearings, are on file with the Packers and Stockyards Administration.

In approaching their duties, the arbitrators have been cognizant of the situation of the livestock producer and the economic conditions which have confronted him during the past three years. They have also recognized that the welfare of the livestock industry is of mutual interest to the producer, the consumer and intermediate agencies, and that it is desirable, therefore, to maintain marketing costs on as low a basis as is consistent with efficient service.

It is a noteworthy fact that the manner in which livestock is shipped to market has materially changed during the past few years. Also the methods of purchasing livestock have undergone material changes. Market agencies are confronted with the necessity of meeting the changing conditions without lowering the efficiency of their service. It has been the usual custom on the part of the producer or shipper to ship his animals in carload lots with seldom more than one owner, but with the development of cooperative shipping, a very large per cent of the shipments of livestock at the four markets under consideration is owned by two or more persons, frequently the owners numbering as high as fifteen and twenty to the car. This method of shipping necessitates a marked departure from the usual method of selling and accounting for livestock to the producers and shippers.

In the purchase of livestock in the market, the buyers representing the larger packers are usually in close touch with their chief buyer, who is generally located in Chicago. He keeps in close touch with the buyers of his concern in the various markets and apparently directs in considerable detail the purchases of the various representatives on the several markets. It appears that the larger purchasing concerns have adopted the policy of employing representatives who specialize in the purchase of market grades and classes. The average buyer to-day representing a packer, either at the market place or elsewhere, is usually looking for animals to fill a definite place in the course of business of that concern. In order to determine properly market value, broadly speaking, the buying conditions found at the several markets require that market agencies be informed as to the receipts of livestock at the various important markets, the prospective supply of livestock, the condition of [fol. 52] the fresh and cured meat trade, the volume of various packing house products going into consumptive

channels, the needs of the local packing plants, demand of buyers from other centers, and be in possession of information concerning the many other factors that enter into the establishing of the trading basis of a given market from time to time. A selling agency at a market center, in addition to being posted on general trade conditions, must be a judge of both the quality of the various classes of livestock and their market value at the time of sale.

It is conceded by all parties that the improper loading at the time of shipment and improper handling of animals in transit, neglect in properly caring for and feeding the animals upon arrival at the market, lack of information or selling ability on the part of the market agencies, neglect in safeguarding other interests of the shipper, may reflect themselves materially in the net return to the shipper or producer.

In reaching a conclusion as to what, in their judgment, will be a fair charge for the producer to pay and a fair compensation to the market agencies for the services rendered, the arbitrators have in mind that it is not within their province to pass on the question of whether a firm has a right to act as a market agency, but they have approached it from the standpoint that the compensation should be reasonably remunerative to those efficiently functioning as market agencies. It would not be to the advantage of the livestock producer to bring about arbitrarily such conditions as to cause necessary talent to seek a field for its services other than with a livestock market agency. It appears that the producer and the shipper should be the best judges as to the quality of service furnished them by the several market agencies and as to whether the service is satisfactory. It is entirely within the power of the patrons of the market to withhold patronage from those market agencies that fail to give satisfactory service. Herein lies an effective means, available to the shipper, of improving market services.

At the four markets involved the shipper may avail himself of the services of the "old line" commission firms or co-operative commission agencies. In addition, if the shipper or producer desires to offer his livestock for sale in person, the facilities of the market center for receiving, caring for and making delivery of his livestock are available to him. This condition offers the producer a choice of methods of selling his livestock and the compensation that

[fol. 53] he shall pay therefor. The Bureau of Agricultural Economics is constantly represented at the market centers and prepares and disseminates, from day to day, carefully analyzed reports of the market conditions on classes and grades of all species of livestock. A similar service is performed by daily market papers and other marketing organizations. From these agencies producers and shippers can inform themselves as to the market conditions under which livestock is being handled.

In approaching the determination of the reasonableness of commission rates for handling livestock at the stockyards, it is apparent, both from information and observation, that while the judicious employment of limited capital is necessary, yet capital as such is not a material income-producing factor. The commission business is essentially personal in the character of the service performed. The relation between the market agency and its customers is primarily a personal one. The useful market agency must always be alert in observing and sensing those factors which enter into the making of market prices from day to day and hour to hour. Constant attention to the maintenance of the highest kind of personal service in behalf of shippers must be exercised at all times. The sound business judgment and integrity of the market agency is of prime importance to the producer and shipper. The selling of the producer's livestock to persons with the ability to pay, collecting, safeguarding and remitting the proceeds to the shipper, are important factors that enter into an adequate service. With these facts in mind, the arbitrators believe the livestock industry will be benefited by the maintenance of the highest quality of service at the market centers.

The arbitrators have considered the commission business strictly on its merits and apart from other activities engaged in by commission firms. In taking this view, it is not their thought that those associated enterprises are not proper activities for those engaged in the commission business, or that they are not beneficial to very many producers, but it is their conclusion that the matter of rates should be considered strictly from the viewpoint of the commission business as such. Very many services beneficial to the producers are, and even to an enlarged degree can be, performed by the market agencies in addition to the strict duties of selling and accounting for livestock.

In respect to market and financial risks to which market agencies are exposed, insurance against many of these [fol. 54] losses has been devised and is offered to market agencies at a comparatively nominal fee. The market agency bears many risks against which there is no insurance or protection, and at the same time is financially responsible to the shipper. Moreover, it is apparent that market agencies must meet the general economic conditions that prevail in respect to wages, cost of equipment, and such other elements as are essential in the conduct of their business.

It is the opinion of the arbitrators that market agencies which conduct a reasonably efficient business should not be arbitrarily denied a reasonable margin of profit for the capital, responsibilities and risks involved. The conclusions reached are based upon what appears to be the basis upon which a well organized commission firm with a reasonable volume of business can operate efficiently, maintaining a high character of service and giving opportunity for reasonable profit.

Many suggestions have been received proposing changes in the methods of assessing and collecting commission charges, but the present form in which shipments are received at the markets renders it inadvisable to make any radical departures. In the present schedules of commission charges there are features which the arbitrators deem advisable to change, believing that their present operation is not entirely equitable. No departure has been made except after full and careful deliberation. The arbitrators are aware that should any of the proposed changes prove to be impracticable, relief may be had upon a proper showing to the Secretary.

The arbitrators are cognizant of the fact that it is difficult to arrive at an exact figure where so many complex services are required. However, after considering all the factors and problems involved, the arbitrators conclude that the schedule of rates and charges hereinafter set forth for the markets under consideration will reasonably compensate market agencies engaged in the sale of livestock on a commission basis for the services performed and the producer and shipper of livestock will not pay more than a reasonable charge for the services required. It is therefore

recommended for the approval of the Secretary that the schedules of rates and charges now in effect at the markets concerned be amended to comply with the following provisions and put into full force and effect as promptly as circumstances will permit.

[fol. 55] Chicago Selling Commissions

Single Ownership—Carload Lots

Cattle:

20 head or less, $17.00,—and 75¢ per head for each additional head over 20 head, with a maximum of $21.00. When car contains less than 14 head, the "drive-in" schedule applies.

Calves—Single-deck:

50 head or less, $17.00,—and 30¢ per head for each additional head over 50 head, with a maximum of $22.00.

Double-deck:

70 head or less, $23.00,—and 30¢ per head for each additional head over 70 head, with a maximum of $28.00. When car contains less than 40 head, the "drive-in" schedule applies.

Hogs—Single-deck:

50 head or less, $13.00,—and 15¢ per head for each additional head over 50 head, with a maximum of $15.00. An additional charge of 30¢ shall be made for each full 500 pounds weight over 17,000 pounds.

Double-deck:

80 head or less, $18.00,—and 15¢ per head for each additional head over 80 head, with a maximum of $23.00. An additional charge of 30¢ shall be made for each full 500 pounds weight over 27,000 pounds. When a car contains less than 40 head, the "drive-in" schedule applies.

Sheep—Single-deck, $14.00.
Double-deck, $20.00.

When a car contains less than 50 head, the "drive-in" schedule applies.

Mixed Livestock:

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	85¢	$21.00	
Calves	35¢	22.00	$28.00
Hogs	25¢	15.00	23.00
Sheep	20¢	14.00	20.00

Minimum of $16.00, and maximum of $26.00, on single-deck car.

Minimum of $21.00, and maximum of $29.00, on double-deck car.

When a car contains cattle and calves only, the minimum shall be $17.00 and the maximum $24.00.

[fol. 56]

Selling Commission

Plural Ownership

Carload Lots

Plural Owner Car Lots—Sold as Single Ownership:

When plural ownership carload lots of livestock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands, or other identification and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

Plural Owner Car Lots Handled for Ownership, Marks, Brands, or Other Identification:

When carloads of livestock require prorating, separate sorting, selling, or weighing for ownership, marks, brands or other identification, or at request of shipper, the following rates shall apply.

Unmixed Cars:

		Single-deck		Double-deck	
	Per head	Minimum	Maximum	Minimum	Maximum
Cattle	85¢	$18.00	$22.00		
Calves	35¢	18.00	23.00	$24.00	$29.00
Hogs	25¢	14.00	16.00	19.00	24.00
Sheep	20¢	14.00	16.00	20.00	22.00

Mixed Cars:

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	85¢	$22.00	
Calves	35¢	23.00	$29.00
Hogs	25¢	16.00	24.00
Sheep	20¢	16.00	22.00

Minimum of $17.00, and maximum of $26.00, on single-deck car.

Minimum of $22.00, and maximum of $29.00, on double-deck car.

When a car contains cattle and calves only, the minimum shall be $18.00 and the maximum $24.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on single ownership carloads.

Stock Driven or Hauled in:

The rates of the present Chicago "drive-in" schedule will apply.

[fol. 57] Extra Services

Drafts:

1. Single Ownership—

When requested or necessary to grade or sort car lots of livestock of single ownership into market grades and classes, a charge of 15¢ shall be made for each draft over three drafts per deck—each draft to be represented by a separate scale ticket. Maximum charge, $2.00.

2. Plural Ownership—

When requested or necessary to grade or sort car lots of livestock of plural ownership for ownership, market grades and classes, brands, marks or other identification, a charge of 15¢ per draft shall be made for each draft over three per deck—each draft to be represented by a separate scale ticket. Maximum charge, $3.00.

Prorating:

When prorating is done a charge of 25¢ for each owner shall be made, with a minimum charge of $1.00 and a maximum charge of $2.50 for this service.

Individual Account Sales:

When individual statements are requested in addition to the master prorate sheet, a charge of 5¢ extra shall be made for each statement.

Kansas City Selling Commissions

Single Ownership—Carload Lots

Cattle:

20 head or less, $15.00,—and 65¢ per head for each additional head over 20 head, with a maximum of $19.00. When car contains less than 14 head, the "drive-in" schedule applies.

Calves—Single-deck:

50 head or less, $15.00,—and 30¢ per head for each additional head over 50 head, with a maximum of $20.00.

Double-deck:

70 head or less, $21.00,—and 30¢ per head for each additional head over 70 head, with a maximum of $26.00. When [fol. 58] car contains less than 40 head, the "drive-in" schedule applies.

Hogs—Single-deck:

50 head or less, $12.00,—and 15¢ per head for each additional head over 50 head, with a maximum of $14.00. An additional charge of 30¢ shall be made for each full 500 pounds weight over 17,000 pounds.

Double-deck:

80 head or less, $17.00,—and 15¢ per head for each additional head over 80 head, with a maximum of $22.00.

An additional charge of 30¢ shall be made for each full 500 pounds weight over 27,000 pounds.

When a car contains less than 40 head, the "drive-in" schedule applies.

Sheep—Single-deck, $14.00.
Double-deck, $20.00.

When a car contains less than 50 head, the "drive-in" schedule applies.

Mixed Livestock:

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	75¢	$19.00	
Calves	35¢	20.00	$26.00
Hogs	25¢	14.00	22.00
Sheep	20¢	14.00	20.00

Minimum of $15.00, and maximum of $25.00, on single-deck-car.

Minimum of $20.00, and maximum of $28.00, on double-deck-car.

When a car contains cattle and calves only, the minimum shall be $15.00, and the maximum $22.00.

Selling Commission

Plural Ownership

Carload Lots

Plural Owner Car Lots—Sold as Single Ownership:

When plural ownership carload lots of livestock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands, or other identifi-[fol. 59] cation and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

Plural Owner Car Lots Handled for Ownership, Marks, Brands, or Other Identification:

When carloads of livestock require prorating, separate sorting, selling, or weighing for ownership, marks, brands or other identification, or at request of shipper, the following rates shall apply.

Unmixed Cars:

		Single-deck		Double-deck	
	Per head	Minimum	Maximum	Minimum	Maximum
Cattle	75¢	$16.00	$20.00		
Calves	35¢	16.00	21.00	$22.00	$27.00
Hogs	25¢	13.00	15.00	18.00	23.00
Sheep	20¢	14.00	16.00	20.00	22.00

Mixed Cars:

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	75¢	$20.00	
Calves	35¢	21.00	$27.00
Hogs	25¢	15.00	23.00
Sheep	20¢	16.00	22.00

Minimum of $16.00, and maximum of $25.00, on single-deck car.

Minimum of $21.00, and maximum of $28.00, on double-deck car.

When a car contain cattle and calves only, the minimum shall be $16.00 and the maximum $22.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on single ownership carloads.

Stock Driven or Hauled in:

The rates of the present Kansas City "drive-in" schedule shall apply.

[fol. 60] Extra Services

Drafts:

1. Single Ownership—

When requested or necessary to grade or sort car lots of livestock of single ownership into market grades and classes, a charge of 15¢ shall be made for each draft over three drafts per deck—each draft to be represented by a separate scale ticket. Maximum charge, $2.00.

2. Plural Ownership—

When requested or necessary to grade or sort car lots of livestock of plural ownership for ownership, market grades and classes, brands, marks or other identification, a charge of 15¢ per draft shall be made for each draft over three per deck—each draft to be represented by a separate scale ticket. Maximum charge, $3.00.

Prorating:

When prorating is done a charge of 25¢ for each owner shall be made, with a minimum charge of $1.00 and a maximum charge of $2.50 for this service.

Individual Account Sales:

When individual statements are requested in addition to the master prorate sheet, a charge of 5¢ extra shall be made for each statement.

Omaha Selling Commissions

Single Ownership—Carload Lots

Cattle:

20 head or less, $15.00,—and 70¢ per head for each additional head over 20 head, with maximum of $19.00.

When car contains less than 14 head, the "drive-in" schedule applies.

Calves—Single-deck:

50 head or less, $15.00,—and 30¢ per head for each additional head over 50, with a maximum of $20.00.

Double-deck:

70 head or less, $21.00,—and 30¢ per head for each additional head over 70 head, with a maximum of $26.00.

When car contains less than 40 head, the "drive-in" schedule applies.

[fol. 61] Hogs—Single-deck:

50 head or less, $12.00,—and 15¢ per head for each additional head over 50 head, with a maximum of $14.00. An additional charge of 30¢ shall be made for each full 500 pounds weight over 17,000 pounds.

Double-deck:

80 head or less, $17.00,—and 15¢ per head for each additional head over 80 head, with a maximum of $22.00. An additional charge of 30¢ shall be made for each full 500 pounds weight over 27,000 pounds.

When a car contains less than 40 head, the "drive-in" schedule applies.

Sheep—Single-deck, $14.00.
Double-deck, $20.00.

When a car contains less than 40 head, the "drive-in" schedule applies.

Mixed Livestock:

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	75¢	$19.00	
Calves	35¢	20.00	$26.00
Hogs	25¢	14.00	22.00
Sheep	20¢	14.00	20.00

Minimum of $15.00, and maximum of $25.00, on single-deck car.

Minimum of $20.00, and maximum of $28.00, on double-deck car.

When a car contains cattle and calves only, the minimum shall be $15.00, and the maximum $22.00.

Selling Commission

Plural Ownership

Carload Lots

Plural Owner Car Lots—Sold as Single Ownership:

When plural ownership carload lots of livestock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands, or other identification and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

[fol. 62] Plural Owner Car Lots Handled for Ownership, Marks, Brands, or Other Identification:

When carloads of livestock require prorating, separate sorting, selling, or weighing for ownership, marks, brands or other identification, or at request of shippers, the following rates shall apply.

Unmixed Cars:

		Single-deck		Double-deck	
	Per head	Minimum	Maximum	Minimum	Maximum
Cattle	75¢	$16.00	$20.00		
Calves	35¢	16.00	21.00	$22.00	$27.00
Hogs	25¢	13.00	15.00	18.00	23.00
Sheep	20¢	14.00	16.00	20.00	22.00

Mixed Cars:

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	75¢	$20.00	
Calves	35¢	21.00	$27.00
Hogs	25¢	15.00	23.00
Sheep	20¢	16.00	22.00

Minimum of $16.00 and maximum of $25.00, on single-deck car.

Minimum of $21.00, and maximum of $28.00, in double-deck car.

When a car contains cattle and calves only, the minimum shall be $16.00 and the maximum $22.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on single ownership carloads.

Stock Driven or Hauled in:

The rates of the present Omaha "drive-in" schedule shall apply.

Extra Services

Drafts:

1. Single Ownership—

When requested or necessary to grade or sort car lots of livestock of single ownership into market grades and classes; a charge of 15¢ shall be made for each draft over [fol. 63] three drafts per deck—each draft to be represented by a separate scale ticket. Maximum charge $2.00.

2. Plural Ownership—

When requested or necessary to grade or sort car lots of livestock of plural ownership for ownership, market grades and classes, brands, marks or other identification, a charge of 15¢ per draft shall be made for each draft over three per deck—each draft to be represented by a separate scale ticket. Maximum charge, $3.00.

Prorating:

When prorating is done a charge of 25¢ for each owner shall be made, with a minimum charge of $1.00 and a maximum charge of $2.50 for this service.

Individual Account Sales:

When individual statements are requested in addition to the master prorate sheet, a charge of 5¢ extra shall be made for each statement.

St. Paul Selling Commissions

Single Ownership—Carload Lots

Cattle:

20 head or less, $15.00,—and 65¢ per head for each additional head over 20 head, with a maximum of $19.00.
When car contains less than 14 head, the "drive-in" schedule applies.

Calves—Single-deck:

50 head or less, $15.00,—and 30¢ per head for each additional head over 50 head, with a maximum of $20.00.

Double-deck:

70 head or less, $21.00—and 30¢ per head for each additional head over 70 head, with a maximum of $26.00.
When car contains less than 40 head, the "drive-in" schedule applies:

Hogs—Single-deck:

50 head or less, $12.00—and 15¢ per head for each additional head over 50 head, with a maximum of $14.00. An additional charge of 30¢ will be made for each full 500 pounds weight over 17,000 pounds.

[fol. 64] Double-deck:

80 head or less, $17.00,—and 15¢ per head for each additional head over 80 head, with a maximum of $22.00. An additional charge of 30¢ will be made for each full 500 pounds weight over 27,000 pounds.
When car contains less than 40 head, the "drive-in" schedule applies.

Sheep—Single-deck, $14.00.
Double-deck, $20.00.

When a car contains less than 50 head, the "drive-in" schedule applies.

Mixed Livestock:

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	75¢	$19.00	
Calves	35¢	20.00	$26.00
Hogs	25¢	14.00	22.00
Sheep	20¢	14.00	20.00

Minimum of $15.00, and maximum of $25.00, on single-deck car.

Minimum of $20.00, and maximum of $28.00, on double-deck car.

When a car contains cattle and calves only, the minimum shall be $15.00, and the maximum $22.00.

Selling Commission

Plural Ownership

Carload Lots

Plural Owner Car Lots—Sold as Single Ownership:

When plural ownership carload lots of livestock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands, or other identification and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

Plural Owner Car Lots Handled for Ownership, Marks, Brands, or Other Identification:

When carloads of livestock require prorating, separate sorting, selling, or weighing for ownership, marks, brands or other identification, or at request of shipper, the following rates shall apply.

[fol. 65] Unmixed Cars:

		Single-deck		Double-deck	
	Per head	Minimum	Maximum	Minimum	Maximum
Cattle	75¢	$16.00	$20.00		
Calves	35¢	16.00	21.00	$22.00	$27.00
Hogs	25¢	13.00	15.00	18.00	23.00
Sheep	20¢	14.00	16.00	20.00	22.00

Mixed Cars:

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	75¢	$20.00	
Calves	35¢	21.00	$27.00
Hogs	25¢	15.00	23.00
Sheep	20¢	16.00	22.00

Minimum of $16.00, and maximum of $25.00, on single-deck car.

Minimum of $21.00, and maximum of $28.00 on double-deck car.

When a car contains cattle and calves only, the minimum shall be $16.00 and the maximum $22.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on single ownership carloads.

Stock Driven or hauled in:

For St. Paul, the "drive-in" schedule shall be: cattle, 80¢ per head; calves, 40¢ per head; hogs, 30¢ per head; and sheep and goats, 20¢ per head.

Extra Services

Drafts:

1. Single Ownership—

When requested or necessary to grade or sort car lots of livestock of single ownership into market grades and classes, a charge of 15¢ shall be made for each draft over three drafts per deck—each draft to be represented by a separate scale ticket. Maximum charge, $2.00.

2. Plural Ownership—

When requested or necessary to grade or sort car lots of livestock of plural ownership for ownership, market grades [fol. 66] and classes, brands, marks or other identification, a charge of 15¢ per draft shall be made for each draft over three per deck—each draft to be represented by a separate scale ticket. Maximum charge, $3.00.

Prorating:

When prorating is done a charge of 25c for each owner shall be made, with a minimum charge of $1.00 and a maximum charge of $2.50 for this service.

Individual Account Sales:

When individual statements are requested in addition to the master prorate sheet, a charge of 5c extra shall be made for each statement.

If circumstances arise under which more than one interpretation of the schedules might be applied, that interpretation which is most favorable to the shipper shall be used.

The revised schedules contemplate a basic charge for those shipments requiring a uniform service and additional charges for those shipments requiring services in addition to the usual standard service. The draft charge is designed to operate when more than the ordinary amount of sorting, grading and weighing for ownership and market grades and classes is necessary. The prorating charge is to compensate for a complete accounting of each owner's livestock in a plural ownership shipment. If, in addition, a separate statement for each owner is rendered, then an additional charge is provided for this service. The amount that can be collected for these special services has been carefully limited and the charges can be assessed only to the extent that the services are utilized. This makes it possible for all shippers to get the benefit of the basic charge when the character of their shipments does not require this extra service. The shippers are thus relieved from paying for services not necessary to the proper marketing of their shipments.

It is the recommendation of the arbitrators that the schedules revised in accordance with the above provisions should be observed by all market agencies engaged in business at each of the markets involved and that no departure from the established schedule should be made except after an actual demonstration by a market agency that it can successfully and efficiently operate under a different schedule than the one herein proposed. A showing for such departure should [fol. 67] be based on the facts concerning the operations of the concern which seeks to change its schedule.

The arbitrators are duly appreciative of the confidence reposed in them, and if substantial justice results from their efforts they will be gratified at this opportunity to have served the industry.

In carrying out their duties the arbitrators have found it necessary to avail themselves of the assistance of many of those engaged in the various phases of producing and mar-

keting livestock. This assistance has been freely and cordially given by the market agencies and their staffs, the producers and their representatives, the staff of the Packers and Stockyards Administration and by many others engaged in the industry. For the cooperation and assistance given, the arbitrators desire to express their appreciation and to accord a full measure of credit.

(Signed) G. N. Dagger. (Signed) Howard M. Gore.

Date of Award July 24th, 1923.

Approved by Authority of Secretary, Henry C. Wallace.
(Signed) C. W. Pugsley, Acting Secretary, United States Department of Agriculture.

July 27, 1923.

[fol. 68] EXHIBIT B-1 TO PETITION AND COMPLAINT

Present Tariff

[fol. 69] The Chicago Live Stock Exchange

Office of the Secretary

Union Stock Yards, Chicago, Illinois

July 1, 1933.

To Commission Firms:

The following constitute the complete text of Rule X of the Rules of The Chicago Live Stock Exchange covering selling and buying commission charges, as approved by the United States Department of Agriculture:

Rule X

Section 1. The Commission for selling live stock shall not be less than the following rates:

Single Ownership—Unmixed Carload Lots

Cattle:

20 head or less, $17.00, and 75c per head for each additional head over 20 head, with a maximum of $21.00. When

a car contains less than 14 head, the "drive-in" schedule applies.

Calves—Single Deck:

50 head or less, $17.00, and 30c per head for each additional head over 50 head, with a maximum of $22.00.

Double Deck:

70 head or less, $23.00, and 30c per head for each additional head over 70 head, with a maximum of $28.00. When car contains less than 40 head, the "drive-in" schedule applies.

Hogs—Single Deck:

50 head or less, $13.00, and 15c per head for each addi-
[fol. 70] tional head over 50 head, with a maximum of $15.00. An additional charge of 30c shall be made for each full 500 pounds weight over 17,000 pounds.

Double Deck:

80 head or less, $18.00, and 15c per head for each additional head over 80 head, with a maximum of $23.00. An additional charge of 30c shall be made for each full 500 pounds weight over 27,000 pounds. When a car contains less than 40 head, the "drive-in" schedule applies

Sheep—Single Deck, $14.00.

Sheep—Double Deck, $20.00.

When a car contains less than 50 head, the "drive-in" schedule applies.

Section 2. Single Ownership—Mixed Live Stock

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	85c	$21.00	
Calves	35c	22.00	$28.00
Hogs	25c	15.00	23.00
Sheep	20c	14.00	20.00

Minimum of $16.00, and maximum of $26.00, on single-deck car. Minimum of $21.00, and maximum of $29.00, on double-deck car. When a car contains cattle and calves only, the minimum shall be $17.00 and the maximum $24.00

Section 2½—Plural Ownership—Carload Lots

Plural Owner Car Lots—Sold as Single Ownership:

When plural ownership car load lots of live stock are handled in the same manner as single ownership cars—that is, not weighed for ownership, marks, brands, or other identification and not prorated, but handled for market grades and classes only—the single ownership schedules shall apply.

[fol. 71] Plural Owner Car Lots, Handled For Ownership, Marks, Brands, or Other Identification:

When car loads of live stock require prorating, separate sorting, selling, or weighing for ownership, marks, brands or other identification, or at request of shipper, the following rates shall apply:

Unmixed Cars:

		Single-deck		Double-deck	
	Per head	Min.	Max.	Min.	Max.
Cattle	85c	$18.00	$22.00		
Calves	35¢		23.00		$29.00
Hogs	25c	14.00	16.00	19.00	24.00
Sheep	20c	14.00	16.00	20.00	22.00

An additional charge of 30c shall be made for each full 500 pounds weight of hogs over 17,000 pounds in single-deck and 27,000 pounds in double-deck.

Mixed Cars:

	Per head	Single-deck Maximum	Double-deck Maximum
Cattle	85c	$22.00	
Calves	35c	23.00	$29.99
Hogs	25c	16.00	24.00
Sheep	20c	16.00	22.00

Minimum of $17.00, and maximum of $26.00, on single-deck car. Minimum of $22.00, and maximum of $29.00, on double-deck car. When a car contains cattle and calves only, the minimum shall be $18.00 and the maximum $24.00.

Under this schedule no owner shall pay more than the maximum commission and extra service charges, if any, on single ownership car loads.

[fol. 72] Extra Services

Drafts:

1. Single Ownership—

When requested or necessary to grade or sort car lots of live stock of single ownership into market grades and classes, a charge of 15c shall be made for each draft over three drafts per deck—each draft to be represented by a separate scale ticket. Maximum charge, $2.00.

2. Plural Ownership—

When requested or necessary to grade or sort car lots of live stock of plural ownership for ownership, market grades and classes, brands, marks or other identification, a charge of 15c per draft shall be made for each draft over three per deck—each draft to be represented by a separate scale ticket. Maximum charge, $3.00.

Prorating:

When prorating is done a charge of 25c for each owner shall be made, with a minimum charge of $1.00 and a maximum charge of $2.50 for this service.

Individual Account Sales:

When individual statements are requested in addition to the master prorate sheet, a charge of 5c extra shall be made for each statement.

Section 3. Less Than Carload Lots.

On less than 14 head of cattle shipped in one car the commission shall be 90 cents per head, and provided, that on less than 40 calves shipped in one car the commission shall be 40 cents per head, and provided, that on less than 40 hogs shipped in one car the commission shall be 30 cents per head, and provided, that on less than 50 head of sheep or goats shipped in one car the commission shall be 20 cents per head.

Section 4. (A) Where a portion of a car is turned over for sale by the consignee to another member of the Exchange, the commission shall be charged at the rates as shown in Sections 1, 2, and 2½.

[fol. 73] (B) Live stock driven or hauled in shall be charged at the per capita rate as shown in Section 3, ex-

cepting sheep or goats, which shall be 20 cents per head, up to and including 70 head. Above 70 head, up to and including 125 head, shall be considered a single-deck. Above 125 head and up to and including 300 sheep or goats shall be considered a double-deck. On less than 50 head of hogs hauled or driven in and received and sold as one consignment shall be handled at the per head rate as shown in Section 3, of Rule X; 50 head or more at the single-deck rate as shown in Section 1, of Rule X, 80 head or more to be considered as a double-deck car when received on one day, belonging to one owner and sold as one consignment.

(C) On live stock forwarded from other markets, full commission shall be charged.

(D) In determining the application of the above rates of commission, the official count and classification of the Union Stock Yard & Transit Company shall rule in all cases.

Section 5. Members of this Exchange may sell live stock on this market for one-half the foregoing rates of commission when sold for the account of suspended members of this Exchange regularly engaged in selling live stock for non-residents on commission; or for the account of another commission salesman who is a member of this Exchange in good standing provided full rates are charged to the owner by the member for whose account such live stock is sold.

On live stock purchased on this market by registered traders, or registered market agencies, and without having been removed from this market, resold for the account of such purchaser, the commission shall be 40 cents per head on cattle, 20 cents per head on calves, and 5 cents per cwt. on the sale weight of hogs, sheep and goats.

Section 6. The commission for purchasing live stock shall not be less than the following rates:

Cattle bought in carload lots for either beef or feeding purposes, 50c per head, minimum $10.00 per carload, maximum $15.00 per carload. Pick-up cars of cattle where bought and picked up in three or more lots, the commission shall be $15.00 per carload. Bulls $15.00 per carload. Milkers and springers, $1.00 per head. Mixed carloads of cattle including milkers and springers, the regular charge [fol. 74] of $1.00 per head will be made for milkers and

springers, and 50 cents per head for others not to exceed $20.00 per carload.

Veal calves, single-deck carload $15.00; double-deck carload, $20.00.

For all cars of hogs weighing on an average of over 140 pounds, shipped in either single or double-deck cars, the charge shall be $10.00 per car. For all hogs averaging 140 pounds or less, shipped in either single or double-deck cars, the charge shall be $15.00 per car.

Sheep or goats for slaughter purposes, single-deck carloads $10.00; double-deck carloads $15.00. Sheep or goats for feeding or breeding purposes, single-deck, $11.00; double-decks, $16.00.

In instances where less than a carload of calves, hogs, sheep or goats are purchased, the commission charge shall be made in accordance with the provisions of Section 3 of this Rule.

[fol. 75] EXHIBIT C TO PETITION AND COMPLAINT

Proceedings, Findings of Fact, Conclusion and Order of January 8, 1934

[fol. 76] Department of Agriculture, Washington, D. C.

UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY

Docket No. 402

SECRETARY OF AGRICULTURE

vs.

C. H. ACKER, Doing Business as C. H. Acker and Company; J. M. Corrick, Fred Hatch and P. B. Unthank, a Partnership Doing Business as Adams, Corrick and Hatch; Alfred E. Adler and John G. Adler, a Partnership Doing Business as Adler Sons and Company; Alexander, Conover & Company, a Corporation; W. C. Allen, Harry W. Aller, Louis Armbrecht Commission Company, A. C. Baker, E. H. Baker, and F. L. Heyne, a Partnership Doing Business as Baker, Heyne and Company; Clar-

ence N. Ball, C. S. Barry, Tom J. Barton and T. P. Looney, a Partnership Doing Business as Barton, Looney Company; H. L. Bell, G. A. Benton, Doing Business as Benton and Company Livestock Commission Merchants; Bowles Livestock Commission Company, a Corporation; F. J. Brennan, Doing Business as F. J. Brennan Company; Gideon Broberg, Willis H. Brott, Doing Business as Brott Livestock Commission Company; Geo. M. Brownson, Doing Business as Geo. M. Brownson and Company; L. W. Budd, Doing Business as L. W. Budd and Company; Chas. L. (Abe) Burnett, Doing Business as Abe Burnett and Company; Walter M. Burrows, Maurice J. Callahan, Doing Business as Callahan Livestock Commission Company; Harry L. Carpenter, Central Livestock Commission Company, a Corporation; Chicago Producers Commission Association, a Corporation; Eugene A. Clark, Doing Business as Clark, Bowles and Company; John Clay, Frank H. Connor, Alan F. Wilson and Chas. G. Smith, a Partnership Doing Business as John Clay and Company; N. W. Cochran, A. W. Henneberry and R. W. Wallace, a Partnership Doing Business as Cochran, Henneberry and Wal- [fol. 77] lace; Conklin Brothers Commission Company, a Corporation; H. D. Copeland and Company, a Corporation; H. H. Daniel, William Daniel, David Degen and Jos. J. Amschler, a Partnership Doing Business as Degen and Amschler; P. T. Dolan and Hokan Roll, a Partnership Doing Business as Dolan, Ludeman and Company; Edward F. Keefer, Doing Business as Doud and Keefer; P. E. Moore and E. A. Woods, a Partnership Doing Business as Drovers Commission Company; H. C. Dunbar, Doing Business as Dunbar, St. John & Company; H. L. Dunning, Doing Business as H. L. Dunning and Company; E. H. Egan, Doing Business as E. Egan and Company; Warren S. Egan, Doing Business as Owen C. Egan and Company; J. L. Ettlinger, Doing Business as Ettlinger Livestock Commission Company; Evans, Snider, Buel Commission Company, a Corporation; Farmers Stocker and Feeder Association, a Corporation; Farmers Union Live Stock Commission, a Corporation; Filler, Wilson and McClelland, a Corporation; Geo. Foale and Edw. Foale, a Partnership Doing Business as Foale Brothers; Leonard S. Foster, R. C. Foster, B. G. Fosterson, Wm. Gentleman, Wm. M. Gentleman, A. M. Gentle-

man, C. F. Gentleman and G. J. Gentleman, a Partnership Doing Business as J. A. Frazier and Sons (In Joint Operation with Wm. Gentleman and Sons); C. F. Freeman, Doing Business as Fred Freeman; I. O. Fry, Felix Gehrmann, Wm. Gentleman, Wm. M. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, a Partnership Doing Business as Wm. Gentleman & Sons (Operating J. A. Frazier Sons); S. G. Gillogly, R. E. Gillogly, F. D. Gillogly, and M. W. Gillogly, a Partnership Doing Business as Gillogly and Company; H. W. Williams and H. L. Johannesen, a Partnership Doing Business as Goggins and Williams; Geo. J. Greenwood, Doing Business as Greenwood Commission Company; Charles A. Hafner, Doing Business as Hafner, Nixon Company; Wm. Haime and Geo. Reneker, a Partnership Doing Business as Haime and Reneker; Chas. E. Harding Company, a Corporation; C. W. Hart, Doing Business as C. W. Hart Commission Company; John A. Havey, Hefner Commission Company, a Corporation; Geo. F. Hogan, Doing Business as Geo. F. Hogan and Company; E. Holloway, P. A. Ogren, Tex Holbert and E. J. Andrews, a Partnership Doing Business as Holloway and Ogren; Frank M. Huffaker, Jr., H. H. Hutcheson, Doing Business as Huffman and Hutcheson; Ingwersen, Mosier and Ingwersen, Inc., a Corporation; Iowa Live Stock Commission Company, a Corporation; W. O. Jennings, Doing Business as W. O. Jennings and Company; Robert E. Johnson, Doing Business as Robert E. Johnson Commission Company; Chris Jordan, Mike Tamble and John Permesang, a Partnership Doing Business as Jordan, Tamble and Company; Edward Joyce, Samuel Keating, J. B. Keller, P. H. Keller and J. H. Keller, a Partnership Doing Business as J. B. Keller and Sons; Kennett Murray [fol. 78] Company and B. F. Pierce, a Partnership, Doing Business as Kennett, Murray and Company; Lyman Keys, Doing Business as Lyman Keys Commission Company; Albert S. King, John Clay, Frank H. Connors, Alan F. Wilson and Chas. G. Smith, a Partnership Doing Business as C. A. Kleman; Dave Klopfer, E. Knettle, Doing Business as Knettle Brothers; E. H. Kuenster, Doing Business as Kuenster Live Stock Commission Company; John R. Lambright, Lyman A. Keys, and Wm. H. Huston, a Partnership Doing Business as Lambright, Keys and Huston; Edward J. Lawler, Doing

Business as Lawler Brothers and Company; Wm. J. Raff, Doing Business as John J. Lawler; Geo. H. Kelly, Doing Business as Lett and Kelly; McCausland, Hoag and Vaughan, a Corporation; C. A. McKelvey, Geo. J. McDonnell, Geo. E. Martin, W. A. Hanley and W. S. Burmister, a Partnership Doing Business as Martin Brothers and Company; Cyrus H. Martin, J. Lee Merrion and Russell Wilkins, a Partnership Doing Business as Merrion and Wilkins; Miller, White and Woods, a Corporation; B. F. Hubbird, Doing Business as Minteer, Hubbird and Company; C. H. Moberly, Moses E. Greenwald, Lee R. Hess and Arthur Ettlinger, a Partnership Doing business as Moog and Greenwald; Frank R. Mullen, Doing Business as Mullen Commission Company; Stewart Mullen, A. R. Monroe, Chas. Murby, Wm. J. Murphy, Doing Business as Murphy Brothers; A. R. Jenkins, Doing Business as Murray and McDowell, Mutual Livestock Commission Company, a Corporation; Will J. Nalley, Doing Business as Nalley Commission Company; Joseph F. Nash, National Live Stock Commission Company, a Corporation; Simon Newhof, Chas. A. Hafner, Doing Business as Nixon Live Stock Commission Company; C. E. Nixon, Northwestern Live Stock Commission Company, a Corporation; Harry J. O'Connor, Doing Business as H. J. O'Connor & Son, Will H. Palmer, Doing Business as Silas Palmer and Sons, W. C. Patterson, Doing Business as John Patterson and Son, W. A. Peterson and Wm. Turnbull, a Partnership Doing Business as Peterson, Turnbull and Company; Robert H. Pritchard, Doing Business as Pritchard Commission Company, John E. Quinn, Doing Business as Quinn Commission Company, Chas. R. Rice, Doing Business as Rice Brothers; Alex Rinderle, Doing Business as Alex Rinderle Company; W. P. Roach and J. B. Roach, a Partnership Doing Business as Roach Live Stock Commission Company; Chas. O. Robinson, Doing Business as Chas. O. Robinson and Company, Rosenbaum Brothers and Company, a Corporation; R. E. Compton and W. L. Compton, a Partnership Doing Business as St. John, Compton, Dunbar Company; Geo. Schrock, John P. Sarsfield and Joseph A. Sarsfield, a Partnership Doing Business as Sarsfield and Schrock

Commission Company; A. P. Schmal, Henry Schroeder, Doing Business as Schroeder Live Stock Commission [fol. 79] Company; F. W. Sheldon, Doing Business as Sheldon Commission Company; W. H. Sherwood and R. H. Sherwood, a Partnership Doing Business as Sherwood and Son; G. R. Sinclair, Doing Business as Sinclair Commission Company; R. E. Sinclair, John Smith and J. C. Eastes, a Partnership Doing Business as Wm. R. Smith and Son; L. Spencer, Doing Business as L. Spencer and Company; S. B. Stafford, Doing Business as Stafford Brothers; Standard Live Stock Commission Company, a Corporation; Adrian F. Starrett, Jr., and Michael E. Peschong, a Partnership Doing Business as Starrett Live Stock Commission Company; Geo. F. Stephenson, Doing Business as Stephenson Commission Company; A. F. Steward, Doing Business as Steward and McIlhany; Stockmens Livestock Commission Company, a Corporation; J. E. Strader and J. L. Strader, a Partnership Doing Business as Strader Brothers; J. J. Sullivan and J. C. Sullivan, a Partnership Doing Business as Sullivan Commission Company; Joseph J. Sullivan, Alonzo Gilmore and Charles J. Castenholz, a Partnership Doing Business as Swanson, Gilmore and Castenholz; Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, a Partnership Doing Business as Swiney Brothers; H. O. Thompson, Doing Business as H. O. Thompson and Company; Guy L. Wheeler and Thos. K. Polley, a Partnership Doing Business as United Commission Company; Geo. W. VonBerner, David C. Wagner, C. B. Waite, H. C. Walter and R. A. Walter, a Partnership Doing Business as Walter Brothers; C. A. Dunbar and Jas. H. Dunbar, a Partnership Doing Business as Walters and Dunbar; J. A. Waters, L. B. Werden, H. M. Wheeler, Wm. G. Norris, Doing Business as W. W. Wilson and Company; E. F. Woelfer, Doing Business as E. F. Woelfer and Company; Sam R. Wolfe, R. S. Whipple, Mrs. Kay Wood and Mary Ripple Wood, Co-Executors of the Estate of Kay Wood, Deceased, Doing Business as Wood Brothers; Glen K. Wood; Will C. Wood, Doing Business as Will C. Wood and Company; Thos. J. Sinnard, Willard A. Roberts and Walter D. Mills, a Partnership Doing Business as Yancey-Sinnard and Roberts; W. E. Young, Doing Business as W. E. Young and Company, Respondents.

Proceedings, Findings of Fact, Conclusion and Order

Proceedings

1. This is a proceeding under Title III of the Packers and Stockyards Act, 1921, instituted by the Acting Secretary of Agriculture according to his order of September [fol. 80] 23, 1932. By this order of inquiry and notice of hearing it was directed that an inquiry be made for the purpose of determining the lawfulness of any and all rates and charges of respondents, and of any rule, regulation, or practice affecting same, or the rendering of any stockyard service without making a lawful charge therefor.

2. Said order of inquiry and notice alleged that the respondents named therein were registered and doing business under the Packers and Stockyards Act, 1921, as market agencies engaged in the business of buying and/or selling in commerce livestock on a commission basis at the Union Stock Yards, Chicago, Illinois, which has been ascertained by the Secretary of Agriculture to be a "stockyard" as defined in Title III of said Act and posted as such; that in accordance with the requirements of said Act respondents had theretofore filed and put into effect schedules of rates and charges for services rendered by them as market agencies; and that a hearing under Title III of the Packers and Stockyards Act, 1921, as amended, should be held for the purpose of determining the lawfulness of any and all rates and charges of respondents and of any rule, regulation, or practice affecting the same, or permitting the rendering of any stockyard service without making a lawful charge therefor.

3. Notice of such hearing was given to the respondents named in said order by serving upon them a copy of said order and notice. Pursuant to this order and notice a hearing was held at Chicago, Illinois before an examiner designated by the Secretary of Agriculture, and said hearing began on May 15, 1933.

4. Prior to the beginning of the hearing an intervening petition was filed, under date of May 4, 1933, on behalf of those members of the Chicago Traders Live Stock Exchange who were not already respondents in the above-entitled cause. Said petition sets out a list of the members of said exchange and in their behalf it was alleged that

those members, except those who are order buyers and are respondents in this proceeding, are engaged in the business of buying and selling livestock at the Union Stock Yards, Chicago, Illinois; that in the course of the conduct of their business the various members of said exchange from time to time place with the various commission firms doing business at the Union Stock Yards, Chicago, Illinois, lots of livestock for sale; that on such livestock so sold by said commission firms said members of said exchange pay to said commission firms a commission on the basis of the [fol. 81] schedule of charges filed with the Secretary of Agriculture by market agencies doing business at said market, and that said rates are under investigation in the above-entitled cause. The petitioners represent that the rate fixed for selling all "seconds" by commission firms doing business at the Union Stock Yards, Chicago, Illinois, is a vital element of the business of the petitioners and that they should be permitted to be heard on the record before a rate is established. The petition prays that the petitioners be given leave to intervene and be treated as parties to the cause, with the right to have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at oral argument if oral argument is granted. Said petition for intervention was denied by the Acting Secretary of Agriculture on the 11th day of May, 1933, for the reason that intervention is not authorized under Title III of the Packers and Stockyards Act.

5. Those respondents who were members of the Chicago Livestock Exchange were present by counsel. Those respondents who were members of the Chicago Traders Live Stock Exchange, with the exception of Walter M. Burrows, C. A. Kleman, Farmers Stocker and Feeder Association, Kennett, Murray and Company, Dave H. Klopfer, C. A. McKelvey, were present by counsel who also offered his appearance on behalf of the dealers for whom the intervening petition had been filed. Permission to appear for the dealers who were not named as parties in the original order of inquiry was denied by the examiner. One of the two respondents who are cooperative market agencies and nonmembers of the Chicago Live Stock Exchange entered its appearance through its manager and president. The man-

ager of the other respondent cooperative agency entered his appearance for his firm.

6. At the opening of the hearing it was disclosed that certain market agencies had registered to engage in business subsequent to the time the order of inquiry and notice of hearing was issued. Under date of May 17, 1933, the Acting Secretary of Agriculture issued an order amending the order of inquiry and notice of hearing in this proceeding by including as parties respondent the following persons and firms: Clarence N. Ball; Willis H. Brott, doing business as Brott Livestock Commission Company: Wm. Daniel; P. T. Dolan and Hokan Roll, a partnership doing business as Dolan, Ludeman and Company; H. C. Dunbar, doing business as Dunbar, St. John and Company; Chas. [fol. 82] A. Hafner, doing business as Hafner Nixon Company; C. W. Hart, doing business as C. W. Hart Commission Company; H. H. Hutcheson, doing business as Huffman and Hutcheson; Robt. E. Johnson, doing business as Robt. E. Johnson Commission Company; Lyman Keys, doing business as Lyman Keys Commission Company; A. R. Monroe; Will J. Nalley, doing business as Nalley Livestock Commission Company; Harry J. O'Connor, doing business as H. J. O'Connor and Son; R. E. Compton and W. L. Compton, a partnership doing business as St. John, Compton, Dunbar Company; George F. Stephenson, doing business as Stephenson Commission Company; Guy L. Wheeler and Thos. K. Polley, a partnership doing business as United Commission Company; and Will C. Wood, doing business as Will C. Wood and Company.

7. It was further ordered that notice be given to the above-named respondents that a hearing would be held to determine the lawfulness of their rates and charges beginning May 26, 1933. A copy of this amended order of inquiry and notice of hearing was served upon each respondent named therein by registered mail, and counsel entered their appearance for these respondents as of the date on which the hearing began.

8. The hearing continued until August 18, 1933, and at that time it was adjourned to be resumed in Washington, D. C., on September 18, all parties agreeing to such an adjournment. The adjourned hearing was resumed on October 20, 1933, and continued through October 24, 1933, and

was again adjourned until November 3, 1933. The hearing was finally adjourned on November 7, 1933. Throughout the hearing counsel for respondent order buyers was permitted to question all witnesses as fully as if his petition for intervention on behalf of traders had been granted. Under date of November 24, 1933, counsel for respondent order buyers filed a written brief and argument for the order buyers and for the traders whose petition for intervention had been denied. Oral argument was had on December 13, 1933, before the Secretary of Agriculture, at which counsel for the Government, counsel for respondent commission firms, counsel for respondent order buyers, and the president and manager of the Chicago Producers Commission Association presented the issues in this case. Counsel for respondent order buyers was also permitted as a matter of courtesy to present argument on the merits of the contentions made by members of the Chicago Traders Livestock Exchange on whose behalf the intervening petition was filed.

[fol. 83] Findings of Fact and Conclusions

Upon careful consideration of the entire record in this proceeding, the following findings of fact and conclusions are made:

I—The Chicago Livestock Market

9. In the year 1865 there was established at Chicago, Illinois, a stockyard which is commonly known as the Chicago Union Stockyards. This stockyard is operated by the Union Stockyard & Transit Company, as a public market. It is here that producers and shippers of livestock can send their cattle, hogs, sheep, goats, mules and horses to be offered for sale to the buyers of the various classes and grades of livestock.

10. The location of the Chicago Union Stockyards is favorable from a standpoint of its access to the livestock-producing sections of the country, north, west, south, and to some extent, east of Chicago. There are other primary markets located at points west and south of Chicago. However, the Chicago market is regarded as the market of last resort for livestock which may not find a satisfactory sale at some of the other public markets. It also stands

midway between the livestock-producing sections and the large meat-consuming sections of the United States. Occupying this somewhat strategic position, the public market conducted at the Chicago Union Stockyards is regarded by the livestock industry as more or less the basic market for livestock.

II—Origin of Receipts of Livestock

11. The points of origin of receipts of cattle at the Chicago market lie principally in the States of Iowa, Indiana, Illinois, Wisconsin, Minnesota, Missouri, Montana, Nebraska, and South Dakota. The Chicago market receives the bulk of its hogs from the States of Iowa, Illinois, Wisconsin, Minnesota, Indiana, and South Dakota; and it receives the bulk of its sheep from Iowa, Illinois, Indiana, Wisconsin, Minnesota, Missouri, Montana, Nebraska, California, Colorado, Idaho, and Oregon. To some extent the Chicago market comes into competition within its trade territory with other central markets and packers operating at points where no central markets exist. The following table gives by species the total number of livestock marketed at seven central markets from the territory described above and the percentage of the total marketed at each:

[fol. 84]

Year	No. Marketed at 7 Markets	Per Cent Marketed at Chicago	Per Cent Marketed at Nat. Stkyds.	Per Cent Marketed at Kansas City	Per Cent Marketed at Omaha	Per Cent Marketed at St. Joseph	Per Cent Marketed at St. Paul	Per Cent Marketed at City Sioux
			—Cattle & Calves—					
1920	8,484,685	39.2	10.2	6.6	16.1	7.3	12.2	8.4
1921	7,465,641	42.8	10.1	6.3	16.3	6.9	10.3	7.3
1922	8,197,614	42.5	10.6	7.1	16.3	4.1	12.1	7.3
1923	8,416,347	42.4	10.0	7.0	16.4	4.3	12.1	7.8
1924	8,766,835	40.6	10.4	6.7	17.5	4.4	11.6	8.8
1925	8,530,403	37.5	10.5	5.9	17.2	4.6	14.3	10.0
1926	9,284,043	37.5	10.1	5.6	17.3	4.5	15.2	9.8
1927	7,491,226	44.4	12.0	4.6	14.7	3.3	13.3	7.7
1928	7,413,521	37.2	10.9	0	17.3	4.1	15.7	9.8
1929	7,104,740	35.9	11.0	3	18.0	3.9	15.5	10.4
1930	6,954,387	33.4	12.2	1	8.9	3.6	16.0	10.8
1931	7,132,693	32.9	11.8	6	19.9	3.4	16.5	10.9
1932	6,123,492	33.0	13.1	.4	19.6	2.9	17.3	8.7
			—Hogs—					
1920	14,031,235	51.7	11.8	1.3	5.5	3.2	14.4	12.1
1921	13,723,948	57.2	11.0	0.8	4.6	2.3	14.3	9.8
1922	13,845,388	56.0	10.2	1.2	4.0	2.5	16.2	9.9
1923	18,659,938	53.5	10.6	1.4	4.4	2.4	15.4	12.3
1924	19,318,741	52.1	10.1	0.9	4.2	1.4	15.8	15.5
1925	15,679,506	47.8	9.6	0.8	5.1	1.5	18.1	17.1
1926	13,845,712	47.5	11.3	0.7	4.8	1.6	20.6	13.5
1927	12,592,335	58.5	9.9	0.2	3.1	1.6	18.9	7.8
1928	14,487,001	50.0	11.8	0.1	5.9	1.2	17.1	13.9
1929	11,805,138	47.5	12.2	0.1	5.9	1.2	19.5	13.6
1930	11,031,088	44.8	12.2	0.1	7.0	1.0	20.6	14.3
1931	12,121,110	41.6	11.6	0.3	7.5	1.1	23.1	14.8
1932	9,814,538	42.2	12.3	0.0	7.5	0.8	24.1	13.1

[fol. 85]

	—Sheep—							
1920	7,692,514	37.8	7.0	10.6	28.1	9.1	5.9	1.5
1921	8,362,679	40.6	6.6	12.9	24.4	9.4	5.0	1.1
1922	7,033,199	37.4	10.2	9.1	28.6	8.4	5.0	1.3
1923	7,939,085	39.1	5.6	9.8	29.6	10.4	4.2	1.3
1924	7,807,096	39.2	5.0	9.5	28.6	11.5	4.4	1.8
1925	7,021,456	35.6	5.9	10.6	26.3	13.8	5.2	2.6
1926	8,325,471	37.3	5.4	10.8	24.6	13.1	5.9	2.9
1927	7,591,997	41.8	5.6	9.4	23.7	11.0	5.6	2.9
1928	8,233,329	28.3	5.1	11.2	29.6	15.8	6.5	3.5
1929	8,622,025	26.2	4.9	10.1	28.8	16.7	7.7	5.6
1930	9,646,876	27.4	5.0	10.5	27.0	14.0	9.2	6.9
1931	10,109,226	27.6	5.1	9.6	26.4	12.3	11.5	7.5
1932	7,897,884	29.0	7.1	7.7	24.7	12.5	12.9	6.1

[fol. 86] 12. Within that portion of the Chicago trade territory where its drawing power on livestock is greater than that of any other central market, so-called interior packers operate, namely, packers whose plants are located at points where no central markets are situated. Within the States of Illinois, Indiana, Iowa, Minnesota, and Wisconsin some fifty-eight such packing establishments were in operation in 1931. The purchases of these packers according to species in 1931 were as follows:

	From Public Stockyards	Direct from the Country	Total
Cattle	308,529	261,695	570,224
Calves	59,662	187,210	246,872
Hogs	1,606,164	5,901,429	7,507,593
Sheep	85,823	174,103	259,926

13. The livestock arriving at Chicago comes by rail and by truck. Rail receipts greatly exceed the truck receipts. The majority of the truck receipts originate within a distance of 250 miles of the market. The record contains an intensive study of the origin by counties of the rail receipts for the year 1927. The use of county lines defines trade territory more precisely than does the use of State lines. The record shows for this year the counties of origin classified on the basis of the comparative drawing power of ten important markets, namely, Chicago, Kansas City, Omaha, South St. Joseph, Sioux City, St. Paul, Denver, Wichita, National Stock Yards, and Sioux Falls. Those counties which sent to the Chicago public market a number of head of livestock representing from 75 to 100 per cent of the total rail shipments to all these ten markets were put in one classification, and those which sent from 50 to 75 per cent to Chicago were put in another. In a third grouping were placed those counties in which the drawing power of Chicago as compared with the other markets was less pronounced. The results of this study of relative receipts for the year 1927 are as follows:

[fol. 87]

	Total rail arrivals at the Chicago public market from counties designated by percentage of Chicago drawing power	The total rail arrivals at ten competitive markets, including Chicago from these designated counties	The ratio of Chicago rail arrivals from designated counties to total rail arrivals at the Chicago public market (expressed as a percentage of the latter)
Cattle and Calves:			
75% to 100% counties	2,559,811	2,650,743	73.05%
50% to 75% "	289,252	474,312	8.25%
Two combined	2,849,063	3,125,055	81.3%
Other counties	490,625		14.0%
Total receipts	3,339,688		95.3%
Hogs:			
75% to 100% counties	6,200,648	6,423,509	82.7%
50% to 75% "	672,770	1,061,793	9.0%
Two combined	6,873,418	7,485,302	91.7%
Other counties	600,820		8.0%
Total receipts	7,474,238		99.7%
Sheep:			
75% to 100% counties	1,811,145	1,870,450	48.2%
50% to 75% "	313,793	514,961	8.3%
Two combined	[redacted],124,938	2,385,411	56.5%
Other counties	[redacted],131,532		30.1%
Total receipts	3[redacted]6,470		86.6%

[fol. 88] III—Manner of Arrival of Livestock at the Market.

14. During the year 1932, livestock was delivered at the Chicago Union Stockyards by twenty-three railroads. Calves, hogs, and sheep, arrive both in single and double-deck cars. It frequently happens that a shipper will send his livestock in consignments consisting of more than one car. However, multiple car shipments are not as common now as in previous years. Several owners may consign their livestock in one carload. Livestock of mixed species is frequently consigned in the same car.

15. In recent years, the transportation of livestock to the public market by motor truck has developed, and this method of transportation has been increasing each year. Trucks transport livestock extensively over a radius of from one hundred to three hundred miles from Chicago.

There is no uniformity in the size of the trucks. Trucks vary in size from those carrying a few head to those carrying a half carload of stock or more. One owner may consign his livestock in several trucks or a number of owners may consign their livestock in one truck. Livestock of different species may be consigned in a single truck. The following table indicates the growth of the truck receipts of livestock, and the ratio which truck receipts bear to the total receipts at the market:

[fol. 89]

Year	Total rail and truck-in volume	Rail receipts		Truck-in receipts	
		Head	Per Cent	Head	Per Cent
Cattle					
1923.....	3,059,591	3,043,824	99.485%	15,767	.515%
1924.....	3,116,142	3,095,951	99.352	20,191	.648
1925.....	2,935,856	2,900,399	98.792	35,457	1.208
1926.....	3,140,613	3,088,765	98.349	51,848	1.651
1927.....	2,801,433	2,746,143	98.026	55,290	1.974
1928.....	2,429,526	2,358,512	97.077	71,014	2.923
1929.....	2,323,982	2,223,522	95.677	100,460	4.323
1930.....	2,164,141	2,035,024	94.034	129,117	5.966
1931.....	2,235,386	2,053,091	91.845	182,295	8.155
1932.....	1,964,849	1,666,590	84.820	298,259	15.180
Calves					
1923.....	705,721	701,259	99.368	4,462	.632
1924.....	743,438	739,484	99.468	3,954	.532
1925.....	764,358	757,956	99.162	6,402	.838
1926.....	655,540	647,955	98.843	7,585	1.157
1927.....	657,488	646,795	98.374	10,693	1.626
1928.....	680,518	656,978	96.541	23,540	3.459
1929.....	592,868	557,323	94.005	35,545	5.995
1930.....	505,974	460,012	90.916	45,962	9.084
1931.....	490,965	420,790	85.707	70,175	14.293
1932.....	406,701	317,608	78.094	89,093	21.906
Hogs					
1923.....	9,918,136	9,855,933	99.373	62,203	.627
1924.....	10,191,044	10,137,100	99.471	53,944	.529
1925.....	7,542,632	7,474,562	99.098	68,070	.902
1926.....	6,693,251	6,600,764	98.618	92,487	1.382
1927.....	7,106,175	6,957,924	97.914	148,251	2.086
1928.....	7,469,055	7,164,098	95.917	304,957	4.083
1929.....	5,854,609	5,475,128	93.518	379,481	6.482
1930.....	5,150,677	4,687,999	91.017	462,678	8.983
1931.....	5,270,971	4,588,296	87.048	682,675	12.952
1932.....	4,342,917	3,232,761	74.438	1,110,156	25.562
Sheep					
1923.....	3,518,249	3,512,214	99.828%	6,035	.172%
1924.....	3,610,328	3,600,819	99.737	9,509	.263
1925.....	3,151,703	3,135,218	99.477	16,485	.523
1926.....	3,585,143	3,563,579	99.399	21,564	.601
1927.....	3,065,423	3,026,214	98.721	39,209	1.279
1928.....	2,893,428	2,830,907	97.839	62,521	2.161
1929.....	2,715,339	2,626,841	96.741	88,498	3.259
1930.....	3,144,260	3,018,313	95.994	125,947	4.006
1931.....	3,369,232	3,199,293	94.956	169,939	5.044
1932.....	2,774,626	2,506,468	90.335	268,158	9.665

16. The above tables are based upon the total receipts of livestock by rail and by truck respectively, as compiled by [fol. 90] the Union Stock Yard & Transit Company, with the exceptions that the direct shipments to packers have been eliminated and the livestock which may be stopped at the stockyard for feed, water, and rest has not been included. The direct consignments to packers varied from 2.46% of the total cattle receipts in 1923 to 1.96% in 1932. The variation as to calves is from 6.81% in 1923 to 8.87% in 1932. The direct receipts of hogs in 1923 amounted to 4.56% of the total hog receipts at the market. This percentage steadily and rapidly increased until it amounted to 34.15% in 1932. In 1923, 13.52% of the total sheep receipts consisted of direct consignments to packers. This percentage had increased to 29.09% in 1932. The through consignments which stopped at the stockyard for feed, water, and rest constitute a very small proportion of the total receipts at the market, the average for each species during the ten-year period being less than ½ of 1%.

17. Some of the railroads have attempted to meet truck competition by the inauguration of a special rate on cars containing a minimum of 10,000 pounds. This sort of rate was adopted by seven of the carriers in September, 1932. Those rules are not uniform. Such rates are applicable only within certain zones, which vary somewhat in their extent. Under these rates, shippers can consign smaller lots by rail than formerly, and get the benefit of rates applicable to such consignments. The weight of the livestock contained in a car determines whether the regular rates, applicable to standard car shipments, will apply, or whether the truck competitive rate shall apply. In any event, the consignments originating within the specialized zones on carriers which have adopted this rate, are given the benefit of the most favorable rate. A test indicates that about two per cent of the cattle, calves, hogs, and sheep, shipped to the market by rail for the last four months of 1932, were shipped in cars to which the 10,000-pound minimum rates were applicable.

18. There are seasonal variations in the receipts, due primarily to the conditions under which livestock is produced and fed in the different sections of the country from which livestock is shipped. The following table shows the number of head of livestock received by rail and truck,

respectively, by months for the year 1932, handled by respondent commission firms:

[fol. 91[

	Cattle		Calves		Hogs		Sheep	
Month	Raif	Truck	Rail	Truck	Rail	Truck	Rail	Truck
Jan.	151851	21508	30173	6142	506375	99763	374247	24586
Feb.	135774	23329	28280	6217	388548	93172	254544	20130
Mar.	137354	24106	41265	6365	300054	66367	198848	12578
Apr.	122160	30689	37806	6840	257937	77108	196261	6836
May.	131328	30828	27997	6236	249105	78958	125729	5533
June.	116473	31525	27354	7658	205372	82061	77617	17284
July.	106155	23215	18576	6675	186192	83603	137123	17837
Aug.	142992	25499	22341	9156	242168	95562	240077	28708
Sept.	155911	22379	20585	9376	224609	97190	274013	30133
Oct.	177502	22541	21988	7808	211080	90859	234066	22511
Nov.	160140	22403	22111	7962	235287	99770	204645	35269
Dec.	123204	19275	16925	7467	251296	104745	196056	38548
Total.	1660844	297297	315401	87902	3258023	1069158	2513226	259953

19. There is also a variation in the number of head of livestock received from day to day. Livestock may be delivered at the stockyards any day, and with the exception of Sundays and a few holidays, it is offered for sale on the market each day. The receipts of cattle are generally much heavier on Monday than on any other day of the week. The second heaviest run of cattle is on Wednesday and the receipts on Tuesday and Thursday are slightly less. The receipts on Friday are much less than on any of the first four days on the week, and the Saturday business is very small. The hogs and sheep receipts are fairly well distributed over the first five days of the week, with a comparatively small run on Saturday.

20. Livestock can be delivered at the stockyards at any hour of the day. The bulk of it is delivered between three and eleven o'clock in the morning. Shippers generally endeavor to ship their livestock so that it can be prepared and offered for sale on the same day of its arrival at the market.

IV—Facilities and Services Afforded by the Union Stockyard & Transit Co.

21. The Chicago Union Stockyards is located on a tract of land lying on the west side of Halsted Street between 39th and 47th Streets. This tract of land is rectangular in shape, being approximately one mile long and one half mile in width. The stockyard consists of pens, alleys, runways, docks, and chutes. In addition to the pen area in

which cattle, hogs, and sheep, are received and offered for sale, this tract of land is occupied by buildings and facili- [fol. 92] ties used for other purposes. The pen area extends from 39th Street southward to 45th Street. Exchange Avenue, which is the main thoroughfare through the yards, extends east and west midway between 41st and 42nd Streets. Laurel Street extends from Exchange Avenue to the north end of the yard. These thoroughfares are provided by the Stockyard company for the convenience of the public in getting to and from the various parts of the yards.

22. The platforms, chutes, and holding pens, for the reception of livestock arriving by rail, are located along the northern end of the stockyards. There are ten platforms from which chutes lead into double chute pens. These chute pens are connected with the entire yard by an extensive system of alleys and overhead viaducts.

23. The hog houses are located at the north end of the yard, and consist of four divisions. The Rock Island Division and the Burlington Division are the most northerly divisions lying on the east and west sides of Laurel Street respectively. Immediately south of these respective divisions are the Cuba and Northwestern Divisions. Platforms Nos. 1 and 2 are located at the north side of the Rock Island and Burlington Divisions. South of these divisions are platforms Nos. 3 and 4. Immediately south of these platforms and on the north side of the Cuba and Northwestern Divisions are platforms Nos. 5 and 6. Just south of these divisions are platforms Nos. 7 and 8. Platforms Nos. 9 and 10 are immediately south of platforms Nos. 7 and 8. These platforms, chutes, and chute pens are used for receiving of livestock arriving by rail and, to some extent, for loading out livestock shipped from the stockyards.

24. The hog houses are double-deck structures, the lower deck being used for holding livestock for delivery to consignees or for shipment from the market as may be required. The upper deck is used by commission firms for sorting and selling hogs.

25. At the southwest corner of the yard are car unloading facilities, in what is known as the Texas quarantine division. Along the east side of the pen area and south of Exchange Avenue are platforms, chutes, and chute pens,

where livestock is loaded in cars for shipment from the market by rail.

26. Platforms, chutes and holding pens are maintained at different places on Laurel Street for the receipt of livestock arriving by truck and the loading of livestock shipped [fol. 93] from the stockyards by trucks. Similar facilities are maintained on a smaller scale in the southern part of the yards. There are also truck unloading chutes, maintained near the sheep houses for use in receiving sheep arriving by truck.

27. On each side of Exchange Avenue, and at the west side of the yards, are located sheep houses. Parts of the sheep house are of double-deck construction. The cattle division consists of pens, alleys, and viaducts, covering generally the area extending south from the hog division to 45th Street. The entire cattle division is on the ground level and unlike the sheep and hog divisions it is not under roof. A section in the extreme southern part of the yard is used by dealers for handling feeder cattle. There are other small sections of the yards which are set apart for special purposes.

28. There are nine scales in the sheep houses, twenty-one scales in the cattle division, and a like number in the hog division. These scales are conveniently located for the weighing of livestock.

29. Livestock arriving at the stockyards by rail for sale is usually consigned to some commission firm, but if not, the stockyard company gets advice from the delivering carrier as to the disposition to be made of it. When a train of livestock is set at one of the platforms, the conductor delivers the waybills to the receiving office of the stockyard company. This is an office maintained by the stockyard company on Laurel Street between platforms Nos. 4 and 5. An employee of the stockyard company announces the names of the consignees and consignors, car numbers, and number of head and species in each car. The stockyard company maintains crews of men who unload the livestock and make a record of the number of the chute into which each carload of livestock is unloaded. This information is posted near the unloading platform for the use of the commission firms, whose employees obtain delivery of the livestock from the stockyard company. Livestock arriving at

night, except sheep, is placed in suitable holding pens on the lower floor of the hog house, also in nearby cattle pens and hog selling pens. When cattle and hogs arrive during the day, usually after six o'clock in the morning, employees of the commission firms take delivery at the chute pens. Sheep arriving at any time are delivered to the pen of the commission firms by the stockyard company. Livestock arriving by truck is usually unloaded by the truck drivers. The stockyard company furnishes the truck driver a form [fol. 94] on which he records the name of the persons from whom and to whom the livestock is shipped, where the money is to be sent, and the number of head. This form is filled out before the livestock enters the stockyard, or upon arrival of the trucks at the yard. The livestock is received, counted, and placed in nearby holding pens of the stockyard company, or delivered to the commission firms at the chutes.

30. Livestock arriving dead in cars is placed on the platforms, when the cars are unloaded, and a rendering company gathers the dead animals up from time to time. The same company hauls away animals which die in the pens or alleys after being delivered to the commission firms. Crippled livestock is turned over to buyers of cripples who haul them from the yards. The crippled hogs are weighed before removal from the yard.

31. Feed is furnished by the stockyard company upon written order of the commission firms. The company hauls hay to the pens, breaks the bales, and scatters the hay in the mangers. In the hog yard there are corn boxes which hold 25 to 30 bushels of corn. There are employees of the stockyard company stationed in the hog yards who take corn from these boxes and scatter it in the pens as ordered by the commission firms. The pens are equipped with facilities for watering. Employees of commission firms usually turn on the water as needed. The stockyard company cleans the pens.

32. After livestock is delivered to the commission firms, the stockyard company does not receive custody of it again until after it is weighed, unless it is held over night. Livestock held over is locked up by the stockyard company and

held by it until delivered to the commission men, the next day.

33. The stockyard company owns and operates all scales on the stockyard used for weighing livestock. When livestock is taken to the scales to be weighed by an employee of the commission firm, he announces to the weighmaster from whom and to whom the livestock is to be weighed. The weighmaster writes that information on the scale ticket of which four copies are made. Another man employed by the stockyard company, known as a scale counter, makes out another form containing the same information. After livestock is weighed the weight is registered on the scale ticket. The weighmaster gives a signal that the livestock has been weighed, and the scale counter counts the animals off the scales. He calls the number of head to the weighmaster, [fol. 95] who records the number on the ticket. At the cattle scales the man who has the next lot of livestock to weigh drives the preceding lot off the scales. At the hog scales stockyard employees drive the hogs off the scales. The sheep are driven off the scales by the commission men. Employees of the stockyard company receive the livestock from the scales and yard it in convenient places for the buyers. In some instances, the buyers may take delivery of their livestock at the scales. The scale counter shows on the form used by him the number of head and the block and pen number where the livestock is yarded. When livestock is bought by an order buyer, it is held in pens by the stockyard company until the order buyer is ready to have it shipped.

34. For its services the stockyard company assesses a charge upon each head of livestock. It also makes a separate charge for feed and feeding at regular published rates. These charges are assessed against the owners or shippers of the livestock. The stockyard company also renders special services, such as dipping, spraying, branding, testing, and immunizing, and for such services special charges are made and assessed against the persons requiring those services.

35. The general superintendent of the stockyard company allots pens to the various firms and individuals doing business at the market. Pens are not leased and are not assigned for any specified period. The stockyard company

reserves the right to change at any time the allotment of pens, both as to location and number of pens assigned. Usually the firms and persons which have been in business for the longest time at the market obtain the locations which are more advantageous for carrying on their operations.

36. On Exchange Avenue at Laurel Street the stockyard company maintains a general office building in which offices are leased to those engaged in business at the market. This building is known as the Livestock Exchange Building. Bills for rent are presented in advance and are usually paid in advance. The stockyard company bills the commission firms weekly for the feed and such bills are supposed to be paid weekly. The yardage charges are billed to the commission firms daily and collected semi-weekly. Those engaged in business at the market furnish a bond to the stockyard company guaranteeing payment of all proper charges except in the instances where firms are cleared by other firms. In such cases the clearing firm gives the bond. The stockyard company pays the freight on incoming shipments by rail and, in turn, collects it from the commission firms semi-weekly.

[fol. 96] 37. The stockyard company adverfises in livestock papers in an endeavor to attract shipments to the Chicago Union Stockyards. It also has representatives who solicit business in the country, their activities extending quite generally over the entire trade territory of the market. The stockyard company mails out circulars to shippers and others. It also promotes the International Livestock Exposition which is regarded by it as a means of attracting business to the market. The efforts made by the stockyard company to attract business are made without regard to any particular firms engaged in business at the market.

V—Special Services Available at the Market Place

38. There is a livestock checking service at the market maintained by independent operators who extend the service to all who choose to use it. Upon the arrival of livestock, they obtain information in regard to the train number, the platform, railroad, time of arrival, shipper's name, number of the chute into which the livestock is unloaded, the number of head, and the number of "cripples" or "deads" if

any. This information is placed on a card and the cards are distributed in boxes where the yard men for the commission firms can go to ascertain what livestock has arrived. Yard men sign the cards covering the livestock which they are going to drive, and the cards are then turned over to the offices of the commission firms. This systematic procedure eliminates confusion and expedites operations of the commission firms. The service is available to those commission firms which choose to employ it and there are only a few firms which do not use it. It is furnished on the basis of a service charge depending upon the volume of business handled. A similar service is maintained in connection with the arrival of livestock by truck.

39. There is a clearing house operated at the market. This house maintains a messenger service which consists in the gathering of the bills from commission firms and delivery of the same to the purchasers of livestock. The checks in payment for the livestock are gathered up from the offices of the different buyers and distributed to the offices of the commission firms. This service is used by all the commission firms, packers, order buyers, and traders on the market. The usual charge for this service is $10.00 per month.

40. The Bureau of Agricultural Economics of the United [fol. 97] States Department of Agriculture maintains a market reporting service at the Chicago market. This office has its staff of market reporters who obtain information regarding the receipts and prices of livestock. Through contact with the principal railroads entering Chicago, information is obtained as to the number of carloads of livestock which each road expects to deliver in time to be included in the current day's receipts. This information is tabulated and made available on the market at 6:00 o'clock in the morning. Also the estimated number of head of direct receipts to the packers is made available. There are similar offices at other principal livestock markets and these offices are connected by a leased wire so that information relative to the receipts at other markets is readily obtained. These reports are posted on the bulletin board in the Exchange Building. Shortly after the market opens a reporter assigned to each division interviews salesmen and buyers to ascertain at what prices sales have been made. The market

reporters also ascertain the facts with respect to supply, demand, and trend of prices of fresh meats. This information is made available locally and wired to the large consuming markets in the east and to the principal livestock markets in the producing areas. Throughout the day this type of information is assembled and distributed. This distribution is made by telephone, telegraph, and through mimeographed reports and the information is given to others who disseminate it by radio. From reporters located in various States, this office obtains and disseminates information bearing upon conditions in the livestock producing areas of the country. Summaries of statistics as to prices and movements of livestock are made from time to time and given to the public. Some of these reports are made daily; others, weekly; and others, monthly. During the month of April, 1933, such mimeographed reports were distributed by mail to more than 60,000 subscribers.

VI—Distribution of Livestock Receipts

41. Substantially all of the livestock received by the respondent commission firms at the Union Stockyards is sold for slaughter or for feeding and breeding purposes. That which is suitable for slaughter purposes is purchased either for local slaughter by packers and butchers in Chicago, or for shipment to packing plants at outlying points. Packers are usually represented on the market by their employed [fol. 98] buyers. Generally the small butchers who operate locally in Chicago do the buying for themselves. Livestock purchased by packers for shipment to their plants outside of Chicago usually engage the services of regularly established order buyers. In addition to the packer buyers and order buyers, the buying side of the market is also represented by dealers, who are commonly referred to as "traders," or "speculators." The dealers buy livestock on the market and resell it themselves, or have it sold by commission firms. The function of the trader is chiefly the buying of various lots of livestock and resorting it into grades or classes suitable to the particular demands of the trade. They also deal in livestock suitable for reshipment to the country for breeding and feeding purposes. To some extent, feeders and farmers come to the market and buy livestock themselves. Not all livestock received at the

stockyards for slaughter is consigned to or sold by commission firms. There are some cattle and sheep and a very substantial number of hogs which are purchased elsewhere by packers and consigned to them at the stockyards. Such livestock is moved direct from the stockyard to the packing plants for slaughter. The number of head of cattle, calves, hogs, and sheep, respectively, shipped from the stockyards during the past ten years are as follows:

	Cattle	Calves	Hogs	Sheep
1923	1,053,541	51,216	2,369,501	1,413,938
1924	1,058,065	49,398	2,989,326	1,380,735
1925	943,549	58,428	2,395,193	1,108,956
1926	1,012,910	48,193	2,108,120	1,443,348
1927	901,024	36,999	2,112,732	1,038,271
1928	735,965	26,716	2,144,996	1,127,725
1929	729,421	28,496	1,831,244	1,117,680
1930	693,705	15,954	1,786,295	1,311,435
1931	778,896	31,605	1,700,212	1,425,951
1932	633,289	31,516	1,035,684	915,051

42. The following table shows the number of head of feeder cattle and calves, and feeder sheep contained in the foregoing shipments:

[fol. 99]

	Cattle & Calves	Sheep and Lambs
1923	294,700	681,840
1924	258,272	706,745
1925	229,929	596,047
1926	239,738	790,635
1927	168,193	501,841
1928	164,203	436,468
1929	165,635	523,676
1930	141,413	371,153
1931	172,975	396,912
1932	144,600	212,725

The slaughter of livestock by packers in Chicago for the past three years is as follows:

	Cattle	Calves	Hogs	Sheep
1930	1,545,337	540,707	6,861,593	3,023,671
1931	1,507,662	515,141	6,902,631	3,063,480
1932	1,372,456	415,326	6,375,742	3,700,134

To a large extent, the livestock purchased by packers at points outside of Chicago and shipped direct to their plants in Chicago is consigned through the Union Stockyards. However, some of the plants receive at least a portion of their receipts direct at their plants without having them consigned to the stockyards.

VII—Business in Which Respondents Are Engaged

43. It is the privilege of the owner to sell this own livestock on the market. This is rarely done. Owners do not always accompany their livestock when it is shipped to the market and when they do they are not sufficiently acquainted with buyers and with the methods of procedure followed in sorting, showing, and selling livestock to be able to perform the selling service by themselves. The system for handling and selling of livestock which has been developed on the market is somewhat complicated, and it is necessary for one who undertakes to sell livestock on the market to be familiar with the routine of the market place. Under these conditions regularly established agencies, located at the market, hold themselves out to receive and sell livestock for those who consign livestock to the market. These same agencies hold themselves out to buy livestock for those who desire to have purchases made for them. This is the [fol. 100] business in which most of the respondents are engaged. Usually the amount of buying done by them is very small compared with their selling business. They are usually referred to as "commission firms." Others of respondents are known as "order buyers." They do no selling but they confine their activities to buying livestock on order. Most of the respondents in this proceeding handle the three species—cattle, hogs, and sheep. There are two commission firms, however, which confine their business solely to selling and buying sheep on a commission basis. One of the respondent order buyers limits its activities to buying sheep.

44. No special type of business organization is required in the conduct of the business in which the respondents are engaged. Some are corporations, some are partnerships, and others are individual proprietorships. Two of the respondents are organizations made up of the producers and incorporated to operate on a cooperative basis.

VIII—Services Rendered by Respondent Firms

45. There is a wide variation in the character of the organization set up by each of the respondent commission firms for handling its business. Generally speaking there are two distinct types of work involved in selling livestock on a commission basis. One phase of the work concerns itself with the physical handling and selling of livestock in the yard. The other phase relates to the work in the office necessary to collect and account for the proceeds of sale of the livestock. Usually men trained in these respective branches of the work are employed to perform the necessary details. However, there is flexibility in the organizations. Some office men help in the yard in the early part of the day, and yard men often help in the office in the later part of the day after the yard work has been completed.

46. The yard organization is made up of salesmen and yardmen. The degree to which the work in the yard is specialized varies. Some salesmen perform yard work and frequently yardmen will do some selling. Most of the respondent commission firms have their work organized by departments as far as yarding and selling service is concerned. For example, a staff of salesmen and yardmen is assigned to handle cattle and another staff is assigned to handle hogs. Some firms have a separate sheep department. Generally speaking the work in the cattle division is [fol. 101] divided between the steer department and the butcher department. The butcher class of cattle includes generally cows, calves, and bulls. Heifers may be handled either in the steer alleys or in the butcher alleys, depending upon conditions. Salesmen are assigned to each of these two divisions. However, it is a common practice for all cattle salesmen to assist each other from time to time as conditions may demand. The yardmen in one department frequently help those in another department and in some instances, salesmen assigned to the selling of one species assist salesmen engaged in selling another species. It is the general practice for salesmen to confine their efforts to one species.

47. Some of the respondent commission firms do not receive enough livestock of a given species to enable them to maintain a selling and yarding force to handle it. This is especially true with respect to sheep. In such cases, ar-

rangements are made with other firms to handle and sell the sheep or a sheep salesman is employed jointly by a number of firms for that purpose. There are several sheep salesmen on the market who hold themselves out to work as joint employees. When sheep are sold for a commission firm by a joint employee or by another firm, the salesman does all the work of yarding and selling. As a rule, he charges a percentage of the regular commission rates or a certain stipulated rate per head or per car. The usual office work required in accounting for the sheep is performed by that firm to whom the sheep are consigned.

48. The selling operations are supposed to begin about eight o'clock in the morning. Therefore, it is essential that the livestock be fed, watered, sorted, and prepared for showing to the buyers as early as possible. Usually yardmen arrive at the yard about 6:00 o'clock in the morning, or earlier, for the purpose of performing their duties. They ascertain if any special instructions have been received from shippers in regard to the handling of their livestock. They then go to the receiving office and obtain information as to the livestock which has arrived for their respective firms. If livestock has arrived during the night, they determine where it has been yarded by the stockyard company and if it is delivered in the morning, they ascertain into what chute pens it has been unloaded. They then go to employees of the stockyard company, known as the "key-man" and obtain delivery of the livestock. Delivery is made by counting the animals as they pass out of the pen into the alley. The livestock is then in the custody of [Fol. 102] the commission firm. The yardmen proceed to drive the livestock in the case of cattle and hogs to the sales pens of the respective firms. Some of the respondent firms have pens assigned to them near the unloading chutes. Others have their pens at the farthest end of the stockyard. The location of the pens makes some difference in the time required to drive the livestock. Conditions as to the congestion of the yard also have a bearing upon the time required. During periods of heavy runs, more time may be required than during the periods of light receipts. There are those individuals about the stockyard who make themselves available for driving livestock at a specified rate for each lot driven. They are known as "trippers" and on occasions of large receipts some of the respondent commission

firms employ extra help of this character. The driving of livestock so as to expedite its delivery to the pens and at the same time not cause any injury to the animals, is an important consideration in the proper performance of a yardman's work. Also it is important to prevent livestock from getting mixed. In the case of truck consignments, they may mark the livestock with some sort of identification marks and drive the livestock of several owners at one time. This is done in order to conserve time in handling small lots. There are times when one yardman may drive several carlots of livestock at once. This is done by operating the gates which are located at convenient intervals along the alleys. The condition in which livestock arrives and other conditions such as the weather may have some influence on how livestock is handled after it is delivered to the pen. Ordinarily prompt steps are taken by the yardmen to feed and water the livestock. The head yardman for each commission firm usually orders the feed from an employee of the stockyard company, who is in charge of feed. The yardmen see to it that the feeding and watering are properly done. They do not usually sort any livestock themselves except in the case of cattle, which they may sort between the steer and butcher alleys. The work of the yardmen requires skill and judgment in the handling of livestock and those qualifications are the result of training received in the yard. They are employed at the beginning to do the simplest sort of driving service by way of assisting regularly experienced men. Gradually as they become proficient and reliable they are given greater responsibilities in handling livestock.

49. Salesmen frequently drive livestock and perform other tasks of the yardmen. The extent to which they do [fol. 103] the work of yardmen varies among the commission firms. Often in a firm with a compartively small volume of business, the owners will perform most of these services in addition to doing the selling. The salemen go out upon the yard some time before the market opens, look over the day's receipts, and sort the livestock according to grade and quality so that it will suit the requirements of the buyer. Before going to the yard, salesmen ascertain what instructions they may have from the shippers in regard to the sale of the livestock and inform themselves with respect to the receipts at Chicago and other markets, the

dressed meat trade, and other factors which may influence prices. They also keep themselves informed throughout the day in regard to any changes in supply or demand which might affect their judgment as to values. After the livestock has been shaped up by the salesmen with the assistance of the yardmen it is then ready to be shown to the interested buyers. Salesmen and buyers are generally acquainted with each other and know their peculiarities as to methods of trading. It is a general practice of the buyers to go through the alleys and ascertain the supply of the various grades and classes of livestock which are available. If a buyer is interested in a lot of livestock, the salesman takes him into the pen, shows the livestock, and makes an offer. The buyer if not willing to pay the price asked, may make a bid. If no sale is consummated, the buyer leaves, and then the livestock is shown to another buyer. By the process of offers and bids, the trend of the market is eventually established and the livestock is sold. There are days when the market may be very active and again there are days when it is slow and draggy. It may vary from hour to hour during the day, and it may also vary as to the different classes and grades of livestock. These changes may make necessary a re-sorting or re-assembling of livestock to meet changed demand. These conditions have the general effect of making an early clearance of a late clearance according as the market is active or slow. Trading is supposed to be completed at three o'clock in the afternoon. Sometimes a commission firm does not sell all its livestock and that which remains is held over until the next day. In such an event the livestock is turned over to the stockyard company which takes custody of it for the night and delivers it to the commission firm the next morning. There are occasions when for peculiar reasons livestock may be held for a period of several days or several weeks. However, those occasions are rare. Livestock is regarded as more or [fol. 104] less perishable in character and each commission firm endeavors to dispose of its receipts upon the day of arrival. It is the custom of the market to sell each owner's livestock upon its merits, requiring the sorting and selling of livestock for ownership where it is consigned in cooperative shipments. However, it happens that in some cooperative shipments, the different owners will have livestock of the same grade and quality and salesmen will sell it accord-

ing to grade and later weigh each owner's livestock separately. Usually in cooperative consignments, the livestock of each owner is weighed at the point of origin and the weight sheet is sent to the commission firm to which the livestock is consigned. If the livestock of different owners is sold on grade in such cases, it may be weighed together and the weights pro-rated on the basis of home weights. Frequently in truck consignments livestock of different owners is graded and sold on grade and then weighed for ownership. The salesman can obtain better results from this method of procedure for the reason that it enables him to present livestock in more attractive lots to the buyers.

50. After livestock is sold, it is driven to the scales by the commission firms to be weighed. This is the work of the yardmen, although some salesmen assist, and in some instances the salesmen do it themselves. At each of the scales in the hog house there is a man employed jointly by the Commission firms and others weighing at the scales, who takes the responsibility of directing the turns of the different firms assigned to weigh at the particular scales. This avoids confusion and prevents delays. The turn director allots time to each firm on some equitable basis. When a number of small lots of livestock is to be weighed by a firm, a yardman often takes several lots together and sorts them at the scales. This is done more frequently in weighing cattle than it is in the weighing of other species. As soon as a lot of livestock is weighed the yardman receives two copies of the ticket which he delivers to the salesman, who marks on one of the tickets the price at which the livestock is sold. The scale tickets are delivered to the office where the accounting work is performed.

51. Some of the livestock handled by traders is placed with commission firms to be sold. Such livestock is commonly known as "seconds." The trader delivers the livestock at the alleys of the commission firms, and frequently such livestock has already been fed. In preparing and [fol. 105] showing such livestock for sale, commission firms perform the same service as is performed for shippers. After such livestock is sold it is taken to the scales and weighed by the commission firm. Sometimes salesmen encounter difficulty in selling livestock belonging to traders for the reason that it looks stale or the buyer may object to it on account of being overfilled. Often the trader places a

price upon the livestock below which he instructs the commission firm not to sell. There are occasions when shippers place a minimum price upon their livestock. This practice, however, appears to be more prevalent in the handling of traders' livestock. If, for any reason, a commission firm does not sell the traders' livestock, the trader takes possession of it at the close of the market and drives it away to other pens, and does not return it to the same commission firm for sale the next day.

52. Occasionally when commission firms are unable to dispose of livestock and after making all possible effort to do so, the livestock may be taken to another firm whose pens are located elsewhere in the yard. If the second firm succeeds in selling the livestock the first firm gives it one-half of the regular commissions. Such sales are usually referred to as "splits." These are rather unusual occurrences.

53. There are occasions when commission firms effect a sale of livestock in the country. This is done more or less as a matter of accommodation and for the convenience of customers. As a general rule the regular commissions are charged on such sales.

54. There is a wide variation among respondent commission firms in the type of office organization maintained. This depends somewhat upon the character and volume of business handled. The larger firms have an office manager, cashier, clerks, and stenographers. Their work is more or less specialized. In other firms the office work is done by a few people who perform all types of service required. In some instances the owners of the firms, in addition to doing the yarding and selling, do practically all of the office work. Upon receipt of the scale tickets in the office the amount for which each lot sold is calculated and bills are rendered to the buyer. These bills are collected and distributed by the messengers from the clearing house. The tickets are then sorted to determine whether all livestock contained in each consignment is accounted for. Account sales are then prepared upon which the details with respect to the transaction [fol. 106] are given. The number of head, weight, price, and proceeds of each draft in the consignment are shown. The items of expense incident to the marketing are then entered on the account sale. The railroads entering Chicago

maintain a joint office in the Exchange Building, through which all business is transacted with respect to the collection of freight charges, delivering, switching orders, car-loading lists, and making waybills. On arrival of the waybills the freight is billed to the commission firms at the minimum weight and rate on the car. If the weight is in excess of the minimum the commission firms figure the amount of the freight. If the weight is under the minimum the commission firms return the bills to the freight office in order to have the freight figured on the basis of the truck-competitive rate if such rate is applicable. The freight office maintains a force of employees which handles these matters expeditiously. The car number, weight, rate, and amount of freight are shown on the account sale. Other usual items of expense on the consignments to the yards by rail are for yardage, feed, commissions and insurance. There are special items which may have to be recorded. In the absence of objection by the shipper there is a deduction made for the support of the National Live Stock and Meat Board, which is an organization representing all branches of the industry for the purpose of promoting the consumption of meat. This is a stated amount per car. If there is transit insurance the local office of the insurance company furnishes to the commission firms the information with respect to the charges to be deducted to cover the premium. On each carload of hogs a stated charge per car is made for maintaining a system of hog dockage. If any livestock is subject to a charge for inspection for brands that information is furnished to the commission firms by the local brand inspector and a specified charge is deducted to cover the cost of that service. At the request of a lamb feeder association in certain states the commission firms deduct from the proceeds of sale of sheep and lambs for members an amount to aid the organization in its work. All items of expense and deductions are calculated and the net proceeds determined. The commission firms maintain in their offices a list of the loans on livestock made by the United States Government through the Regional Agricultural Credit Corporations. This list is checked in order to determine whether in any consignments there is livestock covered by mortgages to secure such loans. Commission firms may [fol. 107] have information in regard to mortgages held by banks or others. In all instances where there are mort-

gages on the livestock such action is taken as is necessary to insure that the proceeds of sale are remitted to the proper parties.

55. A similar procedure is followed in making up the account sales covering truck consignments of livestock. Instead of freight charges the commission firms calculate the truck charges at the rate furnished by the truck driver at the time he fills out the consignment slip. Other items of expense and deductions are substantially the same as in the case of rail shipments.

56. In preparing account sales covering cooperative shipments it is a general practice to prepare a master pro-rate sheet covering a single consignment. The expenses are prorated among the owners and a separate account sale is then prepared covering each owner's livestock. This procedure usually entails additional work depending upon the number of owners, and to some extent upon the number of drafts involved.

57. The account sales rendered to traders covering the sale of their livestock are prepared in the same manner as described for shippers' account sales. However, the items of expense are fewer in number. Yardage, commissions, and sometimes feed are the items of expense charged to the trader. No prorating is involved.

58. After the preparation of account sales is completed the remittances are made. The commission firms get their remittances out on the da of the sale of livestock. There are different ways in which the proceeds are remitted to the shippers. The most common method is by check accompanying the account sale. The shipper may give specific instructions as to how he wants his remittance made. If there are no instructions the commission firm checks its records to see how the shipper had his remittance made on previous shipments. Often the money representing the proceeds of a sale of livestock is remitted through banks and deposited to the credit of the shipper at his local bank. The commission firms determine whether the banks are in business and whether the procedure followed in making previous remittances will be satisfactory. In a small percentage of cases the money is sent by postal money order and by express. This method was used more extensively during the period of the recent bank moratorium. The remittance

[fol. 108] of the proceeds of sale of traders' livestock is made by check to the firm through which the trader clears. This is handled through the clearing house.

59. It is the common practice for the salesmen to write letters to the shippers at the time the remittances are made. The purpose of this is to inform the shipper as to the conditions of the market and any peculiar matters of interest relating to the sale of the livestock. With the growth of truck business and the shipment of livestock in small lots it is not practicable for the salesmen to write letters to all shippers when their remittances are made.

60. Some of the respondent order buyers operating at the market are registered to engage in buying all classes of livestock. However, some of them maintain a staff of buyers for only one species of livestock, inasmuch as their orders for other species are so small as not to warrant the maintenance of a buyer. In such cases arrangements are made with order buyers who do specialize in those species to do their buying for them. Most of the orders for the purchase of livestock come from packers and butchers located at points east of Chicago. These orders are received by telephone and telegraph. It is the custom for order buyers to go through the yards early in the morning to determine what grades and classes of each species are available and the supply of each. Inasmuch as order buyers are familiar with the classes and quality of livestock used by their customers they may advise them in regard to the supplies available on the market. When orders are received the customers may stipulate a price but more often the buyers are allowed to use their own judgment as to the price paid. Order buyers usually buy selected grades and it often becomes necessary to buy small lots here and there in order to get the kind desired by the customer. Most of the orders received are for the killing classes of livestock and in buying the better grades of that class it is often possible to buy them in large lots. The order buyers also receive orders for feeding and breeding classes of cattle and sheep. As a rule such orders require more work in selecting the livestock because the supplies may be limited and it may take several days before such orders can be filled.

61. Respondent commission firms also engage in order buying but that is a relatively small part of their business. Their orders are usually received from their customers who are interested in obtaining livestock for breeding and feed- [fol. 109] ing purposes. However, some of them do buy the killing classes of livestock occasionally. Their buying operations are conducted by the regular salesmen. That business is not of sufficient volume to warrant the employment of special buyers. Their buying operations are carried on in the same manner pursued by the order buyers.

62. After livestock has been purchased suitable for filling an order some sorting may be required. The order buyer with the assistance of his yard help does this. Livestock purchased on order is yarded in pens and held by the stockyard company until an order is received to load it. The order buying firms gives an order for the desired number of cars and gives directions to the stockyard company in regard to the livestock to be loaded. The employees of the stockyard company gather up the livestock and load it on the cars. Usually the buyers for the order buying firms or their yardmen are present when the livestock is loaded to see that the livestock intended for the different customers is not mixed, that the cars are properly bedded, and that everything possible is done to assure the delivery of the livestock to the customer in the best possible condition. When breeding stock and stockers and feeders are purchased to be shipped to the country, it is necessary to comply with the Federal and State laws governing tests before shipment. The order buying firms give the orders to the proper authorities to have the tests made and look after the feeding and care of the livestock while on test.

63. Account purchases are prepared by respondents covering purchases made on order. An account purchase usually contains the date of the shipment, the name of the customer, the location, the name of the commission firm from which the livestock is bought, the number of head, weight, price, total weight, the railroad over which the shipment is made, the charges, the average weight, and total cost. The items of expense entered on an account purchase are commissions, fire insurance premiums, feed, if any, deduction for the National Livestock and Meat Board, and the

charge for exchange, which is the charge on the draft drawn against the customer. The account purchase and the scale ticket are mailed to the customer. These are accompanied by a letter from the order buyer. A telegram is also sent to the customer advising him of the purchase, giving him the average weight and the cost. A draft is drawn on the customer and deposited with the bank for collection unless the customer has made other arrangements for the payment [fol. 110] of the livestock purchased for him. The order buyer is given credit by the bank as soon as the draft is deposited.

64. Respondent commission firms are required to give a bond conditioned upon the faithful and prompt remittance of the proceeds of the sale of livestock. Their bond and that of the respondent order buyers are also conditioned upon the safekeeping of funds coming into their hands for the purchase of livestock and the payment for all livestock purchased.

65. Some of the order buyers do some trading on their own account. They may see what appears to be a bargain, buy the livestock and resell it on the market. Such transactions as a general rule are kept separate from their order buying business.

66. Many of the respondents do not maintain their own independent organizations for handling their business. There are arrangements whereby a regularly established market agency performs some or all of the office, yard, and selling functions for other individuals or firms. This arrangement is generally known as "clearing." The arrangements are not entirely uniform. The condition is brought about by the fact that many firms do not receive sufficient volume to warrant the establishment of an independent office and yard force. Such firms or individuals have a certain amount of business which they wish to retain and therefore they desire to keep their name before the public. Consequently they hold themselves out to the public as being prepared to buy and sell livestock of all species on a commission basis. Ordinarily those firms which are being cleared have no organization except the owner or owners of the firm. In most of such cases the owner or owners are salesmen and do some selling. They may sell all of one

species received and the clearing firm may sell the other species. The arrangement depends on the particular circumstances of each case. In some instances the owners of the firms cleared do no selling. Sometimes the owner or owners of the firms being cleared may do some yard or office work or both. There are a few firms on the market which are cleared by the other firms only as to their finances. The clearing firms collect for the livestock and make the remittances for the firm cleared. This is done to enable the cleared firm to obtain the benefit of the protection of the bond given by the clearing firm. There are 23 [fol. 111] firms on the market which have no clearing arrangements. Each handles its own business exclusively. There are approximately 32 firms engaged in clearing 51 other firms. Generally the bond of the clearing firm covers the obligations of the firms cleared, although there are a few exceptions where the cleared firm carries its own bond. There is some variation in the charges made for these services. Where it is merely a financial service the charge varies from 3% to 10% of the commissions. Where the clearing involves the performance of yard, office, and some or all of the selling services, the charges vary from 30% to 50% of the gross commissions. The firms being cleared usually have some expenses in connection with their business, such as the cost of stationery, circulars, postage, and other small items. There are some respondent firms which clear the business of traders. Under such an arrangement the trader usually puts up a margin with the clearing firm which, in turn, pays for his purchases and collects for his sales. The clearing firm also does the necessary bookkeeping for the trader. Firms which are being cleared, with the exception of those who are cleared only as to their financial operations, do not, as a rule, maintain independent offices. Their office headquarters are established in the offices of the firms by whom they are cleared.

IX—Personal Service Character of Respondents' Business

67. The business of buying and selling livestock on a commission basis involves the rendition of a service, which is essentially personal in character. The yardmen are required to be skilled in driving and handling livestock. Most of them have started by performing the simplest duties,

and as they have become proficient have been promoted. After a period of years a yardman may be permitted to sell a few odd head of livestock now and then, and if he displays aptitude for his work he may eventually become a full-fledged salesman. Most of those now engaged as salesmen and buyers received their training by coming up through the ranks. It is a business which is learned by close contact with those who are performing the service. Some of the salesmen received their training at other markets and some of them received it while working for packers.

68. The work of a salesman and buyer requires the use of skill and judgment. He must know how to evaluate the factors which may effect prices from day to day, and at all [fol. 112] times during the market period each day. He must possess knowledge of livestock and be able to judge the quality of the livestock which he has for sale. In addition, he should possess a pleasing personality and understand how to get on in a business way with his fellow salesmen, the buyers, and their customers. Men who possess these requisites naturally draw business to themselves to a greater or less extent. Close personal relationships are developed between the salesmen and the customers they serve. These relationships often extend over long periods of years and frequently continue from one generation of producers and commission men to another.

69. In addition to the personal service required in the commission business there is required a small amount of capital in the conduct of the business. This capital consists mainly of the fixed investment of office furniture, fixtures, and equipment. Many sales men use horses in the cattle division; some firms own automobiles which are used by them in making their trips to the country. There are other small miscellaneous items representing an investment of a more or less fixed character necessary to the conduct of the business.

70. A small amount of cash working capital is required in the commission business even though the business is essentially a cash one. The commissions representing the income of the respondents are collected as sales are made each day. When sales are made late in the day it may not be possible to collect until the next day. Under these

circumstances the buyer is supposed to settle by 11:00 o'clock the following day. However, commission firms consider it a mark of good service to remit promptly on the day of sale. Inasmuch as most of the remittances are made by check the proceeds are available by the time the check is returned to the bank. When remittances are made through banks it may happen that payment is made before the proceeds are collected and deposited. The remittance of cash itself, or the use of money orders, may also require cash in advance of collections. As a cash working requirement this does not appear to be a very important item. A more important requirement for cash working capital is in connection with the purchases of livestock to go to the country. In those instances some time may elapse before the money is paid by the customer. Under such conditions credit may be extended to the buyer for a short period. Sometimes shippers draw drafts upon their commission firms as soon as the livestock is shipped to market. If these drafts are honored promptly by the commission [fol. 113] firms it usually necessitates the payment of the proceeds before the livestock is sold. Inasmuch as commission firms may suffer a loss if they honor a draft for more than the livestock eventually brings, the practice of honoring drafts in advance is engaged in only to a very limited extent.

71. Certain expenses are paid in advance, such as office rent, and bond premiums. To meet these obligations cash working capital is required. The seasonal character of the business results in a variation of income from month to month. The overhead expenses of the business are fairly constant. Therefore, there may be months when the expenses are in excess of the income. Some working capital is necessary to meet expenses as they occur.

X—Rates Charged by Respondents for the Services Rendered

72. The rates charged by the respondents for their services in selling and/or buying livestock are substantially uniform. Those respondents which are members of the Chicago Live Stock Exchange filed their Tariff No. 2, effective September 15, 1923, to which fourteen supplements have subsequently been filed. This tariff and the supplements constitute a part of the rules of the Exchange and

as such all affiliated commission firms are required to observe it. The supplements which have been filed to the original tariff do not alter in a material way the rates originally filed. The existing tariff of respondent Chicago Producers Commission Association is Tariff No. 4, which became effective on April 1, 1930. Four supplements have been filed to this tariff. The respondent Farmers Union filed its Tariff No. 2, effective September 15, 1923, and since that time supplements Nos. 1 to 5 have been issued. The basic rates charged by respondents are contained in the tariffs as originally filed. These rates vary as to species, the method of arrival, and the mixtures both as to species and ownership. The following table sets forth the summary of the basic rates for selling livestock:

[fol. 114]

	Carlots				
		Minimum		Maximum	
	Per Head	S. D.	D. D.	S. D.	D. D.
Unmixed—					
(1) Single Ownership:					
Cattle	$.75	$17		$21	
Calves	.30	17	$23	22	$28
Hogs	.15	13	18	15	23
Sheep		14	20	14	20
(2) Plural Ownership:					
Cattle	.85	18		22	
Calves	.35	18	24	23	29
Hogs	.25	14	19	16	24
Sheep	.20	14	20	16	22
Mixed—					
(1) Single Ownership:					
Cattle	.85			21	
Calves	.35			22	28
Hogs	.25			15	23
Sheep	.20			14	20
Carlot		16	21	26	29
Cattle and Calves only		17		24	
(2) Plural Ownership:					
Cattle	.85			22	
Calves	.35			23	29
Hogs	.25			16	24
Sheep	.20			16	22
Carlot		17	22	26	29
Cattle and Calves only		18		24	

Less than Carload Lots

	Per Head
Cattle	.90—Less than 14 head in car
Calves	.40—Less than 40 head in car
Hogs	.30—Less than 40 head in car
Sheep	.20—Less than 50 head in car

Drive-ins

Rates are same as for less than carlots, except on sheep and goats the 20c rate per head applies up to 70 head.

70 to 125 head shall be considered a single deck. Above 125 and up to and including 300 head shall be considered a double deck.

73. The tariff also provides that on a car containing less than 14 head of cattle, less than 40 head of calves or hogs, or less than 50 head of sheep, the drive-in schedule applies. As to cattle, calves, and hogs, the minimum charge is applicable in each case to a minimum number of head. This minimum is 20 head for cattle, 50 head for calves in a [fol. 115] single deck and 70 head in a double deck, and 50 head for hogs in a single deck and 80 head in a double deck. The tariff also provides for an additional charge of 30c for each full 500 pounds weight over 17,000 pounds in a single deck and 27,000 pounds in a double deck of hogs. When a plural ownership carload of livestock is handled in the same manner as single ownership, that is, is not weighed for ownership, marks, brands, or other identification, and is not prorated, the single ownership schedule is applicable. In a single ownership carlot of livestock a charge of 15c is made for each draft over three drafts per deck. The maximum charge which can be made for the service of extra sorting is $2 in the case of a single ownership consignment and $3 in a plural ownership consignment. When pro-rating is done a charge of 25c for each owner is made with a minimum charge of $1 and a maximum charge of $2.50 for this service. When individual statements are requested in addition to a master prorate sheet, a charge of 5c extra is made for each statement. Members of the Exchange may sell livestock for one-half the regular commission rates for other commission firms which are members of the Exchange, provided full rates are charged to the owner of the livestock by the member for whose account such livestock is sold. When livestock purchased on the market by registered traders or registered market agencies and without having been removed from the market is resold for the account of such purchaser, the commission charge is 40c per head on cattle, 20c per head on calves, 5c per hundred-weight on hogs, sheep, and goats.

74. The following table sets forth the charges made for purchasing livestock:

	Per Head	Minimum S. D.	Minimum D. D.	Maximum S. D.	Maximum D. D.
Cattle	$.50	$10		$15	
Bulls				15	
Milkers and Springers	1.00				
Veal Calves				15	$20
Hogs—over 140 lbs.				10	10
140 lbs. and less				15	15
Sheep and Goats—slaughter				10	15
Sheep and Goats—feeding and breeding				11	16

The buying schedule provides that if a mixed carload of cattle containing milkers and springers and other classes is purchased the regular head rate for each class is applicable, with a maximum of $20 per carload. If it is [fol. 116] necessary to buy and pick up cattle in three or more lots, the commission is $15 per carload. In instances where less than a carload of calves, hogs, sheep, or goats, is purchased the commission charge for purchasing is the same as the charge for selling less than carload lots. In addition to these rates the schedules contain certain miscellaneous provisions with respect to the application of the rates.

XI—Volume of Business Handled by Respondents

75. The income of respondent commission firms is derived primarily from the sale of livestock on a commission basis. Some income is realized from commissions received for purchasing livestock. To a very small extent some of respondents negotiate the sale or purchase of livestock in the country for which commissions are received. Of the total business handled by the respondent commission firms during the year 1932 the purchases represented 4% as to cattle, less than 1% as to calves, 1½% as to hogs, and 6% as to sheep. Out of the total volume handled by the respondent commission firms the business represented by the sale of "seconds" was 10½% as to cattle, 2% as to calves, 4½% as to hogs, and 2% as to sheep. The volume handled for other firms on a split commission basis was very small, being less than 1% as to cattle, 1% as to hogs, and less than 3% as to sheep.

76. There is a wide variation in the volume of business handled by the different respondent commission firms. The following table shows the number of head of each species handled by each of them in 1931 and 1932, respectively:

[fol. 117] Cattle—1931

Firm No.	Head	Firm No.	Head
18	167,123	2	16,051
66	140,195	59	14,068
4	137,647	28	13,718
51	126,502	36	12,921
100	122,456	8	12,486
45	116,680	29	12,086
77	81,708	94	11,244
71	75,404	85	10,458
10	73,000	42	9,782
81	70,431	50	8,957
11	66,281	78	8,165
56	61,480	87	7,794
33	61,449	74	7,678
80	59,235	3	6,521
70	46,325	12	5,678
21	44,616	67	5,642
43	43,411	27	5,029
38	41,616	95	4,596
19	41,518	46	4,170
23	41,083	64	3,870
99	40,922	52	3,384
20	40,019	84	3,022
75	38,131	68	2,351
24	38,121	35	2,290
58	37,587	5	2,170
62	34,737	86	2,048
92	34,383	39	1,990
34	33,793	9	1,547
83	32,552	32	1,403
6	31,899	60	1,391
97	29,874	7	1,317
63	28,070	1	1,205
48	27,770	31	1,134
54	27,492	47	1,072
69	26,923	72	892
96	26,494	15	756
30	25,877	91	665
16	25,143	17	620
40	23,562	65	620
93	23,236	41	598
55	22,938	88	449

501

Cattle —1931 (Continued)

Firm No.	Head	Firm No.	Head
73	22,661	82	393
22	20,179	25	390
13	18,718	89	311
79	18,292	44	243
61	18,035	76	227
26	17,117	14	147
37	16,484	49	72
		53	34

[fol. 118]

Calves—1931

51	70,544	23	2,131
100	45,580	59	2,072
30	29,615	28	1,962
37	22,293	9	1,817
70	21,799	96	1,794
63	12,242	87	1,516
48	11,530	39	1,408
66	11,223	74	1,333
24	10,713	86	1,289
40	10,150	12	1,267
34	10,101	64	1,089
54	9,766	79	986
99	9,525	13	942
11	9,461	68	831
77	8,220	84	800
58	8,056	27	739
93	6,726	91	710
10	6,658	82	618
42	6,622	3	545
97	6,254	52	406
21	6,096	46	320
78	5,953	7	294
45	5,732	44	283
18	5,571	1	221
26	5,518	25	170
75	5,444	95	145
19	5,254	67	115
71	5,240	76	108
33	5,222	15	94
83	5,220	41	82
92	3,941	14	78

Calves—1931 (Continued)

Firm No.	Head	Firm No.	Head
69	3,708	65	76
85	3,534	5	71
36	3,225	72	59
56	2,944	88	57
81	2,884	49	42
80	2,811	32	37
73	2,810	60	35
55	2,801	53	32
29	2,774	17	29
43	2,720	90	23
38	2,647	31	10
2	2,633	47	5
62	2,449		
61	2,372		
50	2,265		
35	2,187		

[fol. 119]

Hogs—1931

100	599,984	75	39,950
99	245,204	30	36,624
48	220,904	29	36,155
34	166,311	59	33,048
66	140,552	35	31,607
19	139,138	13	31,244
11	137,430	80	29,683
22	134,327	56	29,668
18	129,998	87	29,410
45	126,531	91	29,325
97	118,561	27	28,816
20	117,929	47	25,842
6	115,063	44	25,065
77	111,473	3	22,187
33	109,984	14	22,183
71	108,693	39	20,954
4	102,757	50	19,908
93	99,741	9	17,004
51	98,953	94	15,980
63	97,541	86	15,508
21	97,121	15	15,428
37	93,781	8	15,225
42	91,415	74	14,271

Hogs—1931 (Continued)

Firm No.	Head	Firm No.	Head
10	82,263	65	12,179
23	82,151	68	11,291
19	88,510	64	10,543
16	77,239	84	9,174
58	73,285	49	9,067
82	70,374	12	8,406
43	70,143	67	7,304
26	67,864	79	6,355
83	62,038	76	6,334
24	61,961	1	6,256
38	60,878	36	5,117
55	59,847	25	3,950
78	59,221	17	3,696
62	58,358	46	3,328
61	54,914	95	2,794
40	54,392	72	2,201
70	54,021	52	2,086
28	53,392	7	1,730
54	51,505	32	1,641
73	50,778	60	1,461
81	48,731	88	1,362
2	47,769	53	1,253
96	46,224	41	1,246
85	43,884	5	1,036
92	43,602	31	77

[fol. 120] Sheep—1931

18	702,730	42	3,879
57	694,453	61	3,792
90	440,851	43	3,758
100	421,378	56	3,624
10	233,480	30	3,517
99	183,800	7	3,388
71	150,440	23	3,194
4	148,608	85	2,936
66	142,385	12	2,703
29	84,665	28	2,420
54	72,876	87	2,362
45	66,012	2	2,332
81	65,270	13	2,276
51	37,607	79	1,859

Sheep—1931 (Continued)

Firm No.	Head	Firm No.	Head
62	28,613	27	1,560
93	25,968	35	1,415
21	25,922	4	1,397
80	20,070	68	1,317
78	19,551	9	1,313
48	18,598	8	1,059
6	18,029	74	982
58	16,364	44	804
19	16,346	94	770
55	14,277	50	747
97	14,076	46	705
77	12,941	65	686
16	12,391	91	643
70	11,883	32	550
83	9,615	15	537
11	9,587	59	512
34	9,295	86	434
33	8,936	89	396
92	8,743	72	371
73	8,233	95	344
22	7,067	49	326
37	6,830	1	313
96	5,997	39	282
40	5,442	25	250
38	5,122	5	248
24	4,980	60	204
26	4,930	76	198
63	4,927	84	173
75	4,516	64	163
20	4,400	52	80
36	4,273	31	80
69	4,098	88	67
		17	18
		14	17
		41	13

[fol. 121]

Cattle—1932

18	145,025	8	11,217
4	144,000	85	9,807
66	130,099	37	9,100
100	125,241	36	9,039

Cattle—1932 (Continued)

Firm No.	Head	Firm No.	Head
51	102,122	78	9,013
45	83,803	94	8,702
77	66,715	42	8,670
71	62,254	87	7,378
56	59,818	12	6,651
33	56,243	50	5,518
11	55,955	27	5,457
10	54,622	67	5,368
48	49,903	64	4,523
81	47,903	72	4,420
20	42,578	74	4,380
21	40,593	3	3,956
23	40,186	82	3,759
24	40,151	52	3,676
58	40,090	13	3,276
43	36,379	46	3,024
80	35,007	95	3,000
99	34,710	101	2,705
70	34,661	111	2,565
97	33,971	35	2,130
75	32,806	68	2,059
38	32,274	5	1,986
92	30,829	32	1,715
83	29,762	9	1,634
19	28,743	86	1,422
34	26,532	60	1,315
63	25,838	47	1,239
96	25,570	65	1,222
6	25,085	1	1,024
54	24,827	31	1,008
16	24,013	84	985
55	23,875	39	745
30	23,756	15	723
73	22,497	91	562
26	20,472	88	547
40	17,953	44	534
104	17,936	98	512
62	17,897	89	464
69	17,572	17	403
61	17,216	76	388
59	17,176	41	266

Cattle—1932 (Continued).

Firm No.	Head	Firm No.	Head
93	17,083	102	199
22	16,737	7	164
79	14,377	14	112
2	13,647	103	23
28	12,119	90	15
29	11,364	49	2

[fol. 122]

Calves—1932

51	56,016	23	2,176
100	38,621	50	2,165
30	23,608	87	2,018
99	16,883	2	1,979
70	16,376	36	1,963
66	11,119	9	1,832
63	10,930	59	1,757
37	10,657	28	1,666
48	9,756	81	1,584
40	9,436	96	1,573
24	8,603	94	1,444
58	8,421	80	1,335
54	7,830	12	1,163
77	7,505	84	1,081
11	7,264	91	953
21	6,915	86	908
34	6,179	111	868
93	6,006	79	854
75	5,798	27	829
42	5,695	39	704
26	5,559	68	635
97	5,496	52	548
20	5,254	44	535
16	4,918	74	482
18	4,753	104	421
33	4,674	102	366
10	4,537	13	332
78	4,529	76	270
6	4,516	3	242
4	4,219	67	156
71	4,130	15	132
19	3,887	65	120
45	3,725	46	106

Calves—1932 (Continued)

Firm No.	Head	Firm No.	Head
62	3,452	95	94
85	3,325	32	77
92	3,311	1	71
22	3,250	101	43
69	3,083	88	34
29	3,062	47	32
73	2,977	89	31
8	2,879	60	29
43	2,838	31	25
55	2,468	72	22
35	2,403	5	21
83	2,400	41	21
64	2,365	7	13
56	2,287	14	9
61	2,265	17	9
82	2,229	49	8
38	2,203	98	7
		103	1

[fol. 123]

Hogs—1932

100	508,264	30	24,616
99	249,755	91	23,168
48	153,661	27	21,610
66	129,004	56	19,909
22	118,620	39	18,252
45	117,651	9	17,359
34	116,999	84	17,200
18	116,479	44	16,616
11	105,011	75	16,036
4	104,236	64	14,820
21	100,545	104	14,756
97	95,077	14	14,152
20	93,825	50	14,098
19	93,622	15	13,784
51	88,192	47	13,693
93	85,572	80	12,884
63	80,027	13	11,296
82	78,040	68	10,812
23	77,905	86	10,591
6	76,895	8	10,288
33	74,722	102	9,299

Hogs—1932 (Continued)

Firm No.	Head	Firm No.	Head
42	74,736	65	8,751
77	74,638	12	8,434
71	71,538	59	8,395
10	66,307	49	7,584
37	65,748	76	7,306
58	64,913	3	7,185
54	63,713	94	7,157
55	57,814	74	6,234
92	56,246	79	5,118
78	55,012	36	4,724
24	53,757	1	3,805
62	53,334	67	3,742
2	51,946	111	2,898
16	51,783	46	2,806
69	51,034	17	2,699
40	50,850	95	2,167
29	49,458	52	1,819
83	49,372	32	1,809
73	48,534	60	1,499
38	48,126	5	1,491
43	47,412	88	1,266
70	45,980	72	963
81	44,727	41	905
96	44,653	101	728
85	43,221	98	505
26	40,243	7	402
61	38,784	89	253
28	31,688	103	65
87	30,059		
35	25,879		

[fol. 124]

Sheep—1932

57	631,599	24	2,676
18	515,982	23	2,525
100	397,609	37	2,521
90	273,314	87	2,295
10	148,745	26	2,220
71	142,503	61	2,082
99	135,425	111	1,956
4	132,822	91	1,923
66	105,764	43	1,818

Sheep—1932 (Continued)

Firm No.	Head	Firm No.	Head
103	67,201	85	1,495
29	62,402	13	1,441
81	59,563	44	1,323
51	34,211	104	1,291
45	32,843	35	1,255
21	29,199	8	1,252
62	26,891	9	1,149
93	19,958	64	1,109
83	19,063	59	1,037
97	16,681	27	1,021
77	16,490	79	970
78	16,362	94	944
80	14,021	50	939
58	13,161	32	860
55	12,827	82	852
48	12,275	46	827
33	11,959	65	587
56	9,554	5	468
6	9,431	1	372
19	9,233	15	369
92	8,560	86	358
22	7,922	84	348
96	7,676	3	321
11	6,931	68	273
38	6,749	102	252
34	6,444	76	209
20	6,367	52	151
73	6,301	39	145
63	6,249	7	119
69	5,726	17	90
54	5,073	74	89
30	4,715	49	59
2	4,637	88	51
40	4,634	72	45
16	4,605	14	13
36	4,257	89	8
42	4,065	60	2
70	3,828		
28	3,493		
12	3,409		
75	2,930		

[fol. 125] The number of head given in each case includes all of the livestock handled by the firms regardless of mode of arrival and whether sold or bought.

77. The record in this case also contains the number of head purchased by order buyers. The following table shows the number of head of each species so purchased in 1932:

Cattle

Firm No.	Head
171	99,029
134	37,520
155	37,243
150	31,561
135	24,934
131	24,000
130	13,431
146	10,640
159	8,142
167	4,145
161	3,787
173	2,454
168	1,654
153	54

Calves

Firm No.	Head
171	24,439
173	325
135	295
153	293
130	102
146	46
159	2

Hogs

Firm No.	Head
144	248,953
131	109,860
150	63,459
162	56,496
149	50,580
152	43,507
143	41,447
132	32,027
130	27,744
135	6,391
129	2,428
171	1,238
173	1,086
146	712
134	397
159	220

Sheep

Firm No.	Head
153	273,188
135	8,841
146	645
149	398
131	325
150	240
134	160
162	134

[fol. 126] XII—Gross Revenues Produced by Existing Rates

78. The wide variation in the volume of business handled by the different respondent firms results in somewhat comparable variations in the gross revenues received from the sale and purchase of livestock on a commission basis. This variation, however, is not due entirely to volume. As indicated by the tariff of respondent commission firms, the rates charged vary according to method of arrival and character of the different consignments. There is a variation among the firms in the proportion of the receipts consigned to them according to the different methods of arrival. There is also a variation in the proportion of receipts received in plural ownership and mixed consignments to which different rates are applicable. The livestock consigned to some firms runs more heavily to one species than that consigned to another firm.

79. The following tables show for each respondent commission firm the gross selling and buying commissions received in 1931 and 1932:

1931		1932	
Firm No.	Amount	Firm No.	Amount
100	$311,941.11	100	$291,946.92
18	214,608.62	18	179,579.88
66	162,624,88	66	146,513.99
51	143,199.93	4	143,814.37
4	139,975.87	51	115,143.95
99	121,567.35	99	95,357.70
45	111,896.48	45	88,541.09
10	99,387.32	71	77,790.07
71	96,437.40	10	73,925.64
77	88,594.72	11	71,167.40
11	87,983.37	77	70,982.35
33	74,825.41	48	67,989.24
48	74,289.64	33	65,478.55
81	73,073.99	21	63,720.58
19	68,761.63	20	57,761.50
21	64,923.41	81	53,436.10
34	59,493.84	97	52,670,46
20	59,073.33	58	51,524.00
80	56,837.87	56	51,016.77
6	56,346.88	57	48,934.32

[fol. 127]

1931		1932	
Firm No.	Amount	Firm No.	Amount
56	55,622.09	23	46,257.82
97	54,604.35	19	46,193.93
70	53,781.89	24	45,385.48
57	52,912.14	34	44,990.74
58	52,769.11	22	42,828.42
43	51,042.42	63	42,500.91
23	49,409.24	70	42,162.17
63	48,749.33	6	41,261.75
22	48,241.23	43	40,361.34
93	48,112.50	92	40,356.45
24	47,792.89	54	39,496.35
38	46,925.92	93	38,326.73
54	44,734.97	38	37,957.25
37	43,881.42	83	37,697.93
83	43,712,74	55	36,751.27
62	41,923.10	73	33,350.90
92	40,242.92	96	32,694.73
69	39,053.21	40	32,163.80
75	38,949.32	16	32,138.34
40	37,991.64	80	31,634.94
16	37,194.78	75	30,280.42
55	36,956.33	30	30,259.15
30	36,901.04	62	29,691.47
96	33,883.87	42	28,313.60
90	33,755.25	29	28,212.88
42	33,622.01	37	26,657.47
73	32,256.78	69	26,606.16
26	30,406.71	2	25,533.72
61	28,457.30	78	25,259.95
78	26,622.88	26	24,965.26
29	26,432.87	61	23,581.10
2	26,154.43	90	20,614.28
13	22,600.27	85	19,669.47
85	20,602,30	104	18,565.21
28	19,293.92	87	16,000.41
59	18,705.89	28	15,312.32
8	16,011.34	82	14,659.37
87	15,441.95	59	14,275.81
79	14,085.95	8	12,757.72
50	13,533.23	79	11,336.75
36	12,398.99	27	10,327.69
94	12,034.41	35	9,547.79

[fol. 128]

1931	
Firm No.	Amount
27	11,780.43
3	11,171.79
35	11,056.40
82	11,005.34
91	8,227.99
74	8,113.42
12	7,387.32
9	6,733.45
67	6,362.15
64	6,223.06
39	6,118.50
86	6,074.98
44	5,844.05
14	5,351.01
68	5,247.54
84	5,158.12
46	4,489.58
95	4,417.36
15	4,408.62
65	3,299.90
52	3,227.78
47	2,480.90
1	2,290.45
5	2,160.25
49	2,038.50
7	1,923.75
76	1,723.04
32	1,590.35
60	1,546.20
25	1,304.60
72	1,259.42
17	1,190.70
41	833.65
88	784.40
31	545.45
53	375.60
89	306.50

1932	
Firm No.	Amount
50	9,404.40
36	8,970.29
12	8,640.58
64	8,259.90
94	7,615.50
9	7,134.48
91	6,960.33
84	5,747.07
13	5,690.93
103	5,237.74
3	5,124.97
67	5,091.65
68	4,860.33
74	4,614.70
39	4,411.45
44	4,340.20
15	4,131.01
86	3,962.21
52	3,581.20
46	3,345.92
65	3,237.80
111	3,211.03
14	3,036.25
95	3,031.26
102	2,673.70
101	2,324.85
76	2,149.35
5	2,066.64
32	1,930.65
1	1,816.50
47	1,563.25
60	1,504.95
49	1,204.59
72	1,095.12
17	956.01
88	781.83
98	569.95
41	442.75
31	408.00
89	396.50
7	248.55

[fol. 129] 80. The following table shows the gross commissions received by the respondent order buyers in 1932:

Firm No.	Amount
171	$49,844.00
131	21,981.00
150	19,453.00
153	17,713.30
134	16,836.50
135	14,488.00
144	14,432.50
130	8,392.75
162	4,705.00
159	4,466.70
149	3,394.50
143	3,225.00
152	2,335.00
167	2,124.50
146	1,858.00
132	1,850.00
155	1,341.50
173	1,304.50
168	487.50
161	395.00
129	180.00

In addition to commissions received, fourteen of respondent order buyers realized trading profits varying from $24.67 in the case of one firm to $33,695.04 in the case of another firm.

XIII—Methods Used by Respondents in Getting and Maintaining Business

81. The rendition of satisfactory service is essential to the maintenance of the business of a commission firm. Respondent firms differ somewhat in their views as to the merits of the different methods used to attract business. There are certain methods which have come into more or less general use. Most of the respondent commission firms issue market letters to their customers. These market letters vary in size from a card to a circular of several pages and contain information bearing upon the prices at which the various grades and classes of livestock have been sold, outstanding sales made by the firm, and general market

conditions. These market letters are sent at stated in- [fol. 130] tervals, usually once a week or once in two weeks. Special circulars are issued by some firms on special occasions or for special classes of their customers. Each commission firm keeps a list of customers and prospective customers for mailing purposes. Some of them keep special mailing lists and the circulars are prepared especially to meet the conditions at those times when these customers are interested in keeping informed regarding the market. There is a daily market paper published at the market known as the Chicago Daily Drovers Journal. Most of the respondent commission firms subscribe to this paper for those customers who ask for it, and who have sufficient business to justify the expense. They also hand out to their customers, pencils, memorandum books, and other novelties bearing the firm name. They entertain their customers to some extent, although the rules of the Exchange prohibit the members thereof from purchasing meals for customers on the stockyards or adjacent thereto.

82. Respondent commission firms also make trips to the country to visit their customers. These trips are usually made by employed salesmen and members of the firms. The purpose of these trips is to keep up the friendly relationship with customers, advising customers in regard to feeding and time of marketing their livestock, appraising livestock, and to make contacts with prospective customers, if possible. This activity is generally known as "soliciting." Respondent members of the Exchange are limited under their rules to a period of 62 days per year each for soliciting. Some use more of their allotted time than others. These trips are usually made during the latter part of the week when the work in the yards is slack. The trips are made both by auto and by rail. In a few cases, where a firm has a class of business located in far western territory, a salesman will make one trip of several weeks' duration in the course of a year. Many of these trips are made on request of customers who have livestock about ready for market and desire to have the salesman's judgment as to their fitness for market. Sometimes salesmen when in the country assist their customers in sorting livestock.

83. There are feed lots nearby Chicago where sheep destined for the Union Stock Yards are sometimes un-

loaded for a period, in order that they may be fed and rested before being sent to the market. Recently the extent of this business has decreased and sheep have been sent direct to the market. Those commission firms interested in [fol. 131] handling sheep are sometimes called upon to go to the feed lots and see that the sheep are receiving proper attention. It sometimes happens that sheep are sheared in the feed lots and the wool is sold. If requested to do so, the commission firms make arrangements for having the sheep sheared and look after the selling of the wool. This is done by the commission firm without any extra charge.

84. Many of the respondent firms loan money to their customers for feeding out livestock. Usually they take a mortgage on the livestock and the feed. Some loan on a rather extensive scale while others loan very small amounts. They may loan their own money or they may assist their customers in obtaining loans at banks. Notes taken for loans are frequently discounted at the banks. There is usually a margin of from one-half to one per cent between the rate of interest charged to the borrower and the rate paid by the commission firm at the bank for the money. It is generally understood that the livestock will be returned to the commission firm for sale when it is ready for market. Although the loaning of money is not regarded as a part of the business of buying and selling livestock at the stockyards, it is considered an effective means of holding a customer's business.

85. Personal correspondence is another method used by all commission firms to keep up contacts. Letters are written to customers on a rather extensive scale. In this way the commission firms advise their customers relative to the sales which they have made, the prospects for the future, and any matters of peculiar concern to the individual customer. Letters are also written to prospective customers giving advice generally on market conditions. Many letters are written in response to inquiries for information and advice.

86. The respondent order buyers usually solicit their business by telephone or telegraph. They write letters to their customers and sometimes get out a market card. Occasionally they make trips to the East in order to visit their customers.

XIV—Joint Activities of Respondents

87. With the exception of the two cooperative market agencies, the respondent commission firms maintain an organization known as the Chicago Livestock Exchange, which is a corporation. The purpose of this organization is the [fol. 132] promulgation and enforcement of rules establishing uniformity in customs and usages, providing for speedy adjustment of disputes and promoting the welfare of its members generally. Membership in this Exchange is held by individuals. All salesmen working for firms affiliated with the Exchange and all who solicit for those firms must have a membership. There are activities carried on by the Exchange which affect the operations of respondent commission firms affiliated with it.

88. The Exchange maintains a system of hog dockage. It employs an inspector at each scale in the hog division. It also employs a chief inspector. It is the duty of the inspectors to determine whether there should be any deduction made from the weight of any hogs as they go over the scales on account of physical condition. Uniform allowances in weight are made on stags and piggy sows. This service has been offered to all agencies operating on the market, but not all have availed themselves of it. A charge of 25c per car, and 1c per head up to 25c on each truck consignment, is made for this service and assessed against the shipper. If there is a dispute between a buyer and a salesman in regard to whether an animal should be docked, the matter is referred to the chief inspector and if there is dissatisfaction with his decision the case is referred to an arbitration committee. A special charge is made for the settlement of the dispute and is paid by the party calling for the arbitration.

89. The Exchange employs a market analyst, who broadcasts the market reports each day. This activity is supported by a charge of 10c per car on the incoming business, which is assessed against the affiliated commission firms.

90. In cooperation with the State of Illinois the Exchange handles the inspection and tagging of reactor and suspect cattle. The State does the physical work of tagging the cattle in the yards. The Exchange does the clerical

work and reports on the disposition of the animals to the commission firms, who, in turn, report to their customers. A charge of 10c per head is made on such cattle for this service and collected from the shipper by the commission firms.

91. The Exchange maintains a claim department for the purpose of handling loss and damage claims for shippers against railroad companies on consignments of livestock to and from the market. A charge of 15% is made for collection, and 33⅓% in case it is necessary to sue on a claim.

[fol. 133] 92. The Exchange has a blanket insurance policy covering all livestock consigned to affiliated commission firms while in the stockyards. This policy insures against loss by fire or mixing occasioned by fire. The premium on this insurance policy is 15c per car, 7c of which is collected from the shippers. The balance is absorbed jointly by packers and yard traders. The Exchange collects the funds for the benefit of the National Livestock and Meat Board. This is a deduction of 25c per car made by the commission firms from the proceeds of the sale of livestock. They turn the money over to the Exchange which, in turn, remits it to the Board.

93. The Exchange participates in railroad rate proceedings. It also engages in other activities concerning relationships of its members and settles any disputes between members and their patrons. The Exchange obtains funds for carrying on its activities by making assessments against its members.

94. The respondent order buyers and the yard traders have an organization incorporated under the laws of Illinois, known as the Chicago Traders Livestock Exchange. It was founded for the purpose of promoting the interests of its members, establishing uniformity in customs and usages of the trade and simplifying business transactions. This Exchange also arbitrates disputes among its members. There are seven individual order buyers and twelve order buying firms which are members of this Exchange. The Exchange collects from its members their contribution in payment of their share on the premium for the blanket insurance policy.

95. Neither of the Exchanges engages in the business of buying and selling livestock. It is not necessary for a firm or individual to belong to either Exchange in order to engage in business at the Chicago market.

XV—Risks Incurred by Respondents

96. There are risks incurred by respondents in the conduct of their business, such as the hazards involved in selling mortgaged or stolen livestock, the loss of furniture and fixtures by fire, injury to employees in the yards, defalcation of employees, injury to or mixing of livestock through negligence of employees, errors arising in accounting, and a decline in volume of business. Against the first four of these hazards the commission firms can obtain and many of [fol. 134] them do carry insurance. Losses from injury to and mixing of livestock arising in connection with the business are negligible, inasmuch as respondents hire men of experience and ability to perform the necessary services in handling livestock properly. The errors made in the accounting usually involve small items and are of such a character as would normally occur in the handling of a large number of transactions. The risk of losing volume is not a risk peculiar to the commission business. Respondents endeavor to meet this situation by the rendition of efficient service, and the maintaining of their contacts with their customers. There is, of course, competition among the respondent commission firms to get the business which comes to the Chicago market. They also experience some competition in certain sections from commission firms at other markets. Some of the business which normally would come to the Chicago market is diverted into the channels of direct buying by packers in the country. Some firms have some customers who have remained with them constantly over a period of years, and naturally as these customers go out of business, an attempt is made to obtain business from new customers.

97. There is a risk involved in the purchase of livestock on order. It is necessary under the rules of the market for payment to be made promptly. If for any reason, the customer should refuse to receive the livestock and honor the draft, a loss might result to the order buying firm. This contingency requires that care be exercised in deter-

mining the financial status of the customer and his ability to pay. Losses on this account rarely occur. Respondent commission firms contend that they experience a very great hazard in the possibility of non-payment for livestock purchased by buyers on the market. Even though no legal liability is imposed upon them if they exercise reasonable care in assuring themselves that the credit of the buyer is sound, they feel they would have a moral obligation to their customer to reimburse him in case the packer or buyer failed to make payment. This hazard does not exist to the extent that traders and order buyers who purchase livestock on the Chicago market are required to give a bond covering their obligations. This situation does not apply to purchases made by packers. However, experience does not disclose that any material losses have been suffered on this account.

98. Another hazard which is pointed out by the respondent commission firms is that involved in the possibility of [fol. 135] bank failures. It is claimed that this loss may arise from the failure of a bank through or to which the remittance is made for the account of the shipper. Generally remittances through banks are made on the shipper's instructions. Notwithstanding the fact that a commission firm would be discharged of any legal liability in case it exercised proper care and followed the shipper's instructions, it claims that it has a moral obligation to see that the shipper gets his money. There is another way in which it is claimed that bank failures may result in a loss to commission firms. It is necessary for each commission firm to deposit the proceeds of sale of livestock in a local bank at or near the stockyards. Not only do the commission firms carry the proceeds accounts in these banks, but many of them also carry their own firm accounts in them. A failure of one of these banks would result in a non-payment or at least only partial payment of checks outstanding, which had been given by the firms to shippers in the remittance of proceeds of the sale of their livestock. During the recent bank moratorium shippers frequently held checks of commission firms for a considerable period of time, for the reason that they preferred to take a chance on the soundness of the bank upon which the checks were drawn in preference to making a deposit in their local

banks. Respondent commission firms contend that this increases the hazards of the business. Here again it is their position that even though no legal liability would be imposed upon them, they would still feel a moral obligation to reimburse the shipper in case of a bank failure. To the extent that the firm's own funds would be jeopardized by the failure of banks located at the stockyards, there is a real hazard. That hazard could involve only such cash working capital as is necessary to the firm's operations. The record shows that one bank located near the stockyards, and used by some of the respondent commission firms, did close its doors. This resulted in some financial embarrassment to certain firms. It is not known to what extent there will be actual losses incurred.

99. Respondents take certain risks in making livestock loans to their customers. It is presumed that the interest charged on the loans is sufficient to pay for the use of the money loaned, and cover the risks involved in making the loans. Inasmuch as the loaning of money is not a part of the business of buying and selling livestock on a commission basis at the market, the hazards involved are not incident to the commission business as such.

[fol. 136] XVI—Economic Conditions Affecting the Operations of Respondents and the Livestock Industry Generally

100. This proceeding was instituted during a period of one of the most severe economic depressions in the history of this country. During this period the livestock-producing interests have suffered severely from the decline in the prices of livestock to almost unprecedentedly low levels. Under these conditions those producers who have been engaged in breeding livestock have taken heavy losses. Those engaged in the grazing and feeding of livestock have in a large measure conducted their operations at a loss. Prices of feed have fallen to such low levels that under some circumstances it has been possible for some of those engaged in feeding livestock to operate at a profit. However, general conditions have been unsettled and producers of livestock in many instances have been forced to liquidate their operations with heavy financial losses.

101. Respondent commission firms have felt the effect of disturbed economic conditions even though they have operated on the same level of charges throughout the depression. They have experienced an increase in certain items of expense, such as increased postage rates and an imposition of a tax on checks, telegrams, and telephone calls. However, the chief factor affecting the business conducted by respondents has been the decrease in the volume of business consigned to the Chicago market for sale. This decrease is to be attributed largely to the growth in importance of other terminal livestock markets and the development of the custom among producers of selling in the country. There are many packing establishments located at points other than the central livestock markets and many of these plants buy their requirements locally. Some of the packers, especially the larger ones, located at Chicago buy in the country and have the livestock shipped to their plants in Chicago. To a certain extent there appears to be in progress more or less decentralization in the marketing of livestock, and the result of this has been to reduce the volume of receipts handled at the Union Stock Yards, Chicago, Illinois, and other markets. Respondents have by necessity met this condition by reduction in expenditures either through reducing salaries and other items of expense or through the reduction in the personnel of the organization, or both. In some instances firms have retired from business, and in others firm consolidations have been [fol. 137] effected. Practically all respondents have made substantial reductions in salaries of employees and owners. These reductions were made chiefly in the year 1932, although some firms made further reductions during the year 1933. Some curtailments have been made in the amount spent for circulars and other forms of advertising.

XVII—Basic Principle Governing Determination of Reasonableness of Commission Rates

102. Respondents vary among themselves as to the type and size of organization and degree of specialization necessary in rendering the services for which rates are charged. In some respects their operating conditions are similar. They have to meet the same general conditions in the handling of livestock in the yards and in the performance of

the necessary office work. They hire their labor in the same general labor market. By reason of the physical conditions in the yards some have pens more conveniently located than others, resulting in a difference in the time required to drive livestock from the unloading chutes to the pens. Some receive relatively more of one class or grade of livestock than others. The receipts of some firms run more heavily to rail arrivals than is the case with other firms. There is also a variation to some extent with respect to the general business policies followed in regard to the form of organization, the distribution of work, and methods of maintaining and getting business. Notwithstanding the fact that the variations reflect themselves to some extent in the cost of doing business, each respondent is endeavoring to render the best service possible to its customers and observes a schedule of rates and charges for its services which is uniformly observed on the market.

103. In determining whether the existing schedule of rates and charges is unreasonable, it becomes necessary to apply some reasonable and fair method of testing those rates and charges. A method has been adopted in other commission rate determinations by the Secretary of Agriculture, pursuant to the terms of the Packers and Stockyards Act, and that method was approved by the Supreme Court of the United States in the case of Tagg Brothers and Moorhead, et al., versus United States (280 U. S. 420). In that case, which is known as the Omaha Commission Rate Case, it was decided that the rates charged by a group of market agencies at a market for selling and/or buying [fol. 138] livestock on a commission basis should produce gross revenues sufficient to pay all reasonable costs and a reasonable compensation for management and risk, that is, a reasonable profit, to owner or owners of all firms which receive enough livestock to enable them to handle their business in a reasonably efficient and economic manner. That principle is adopted as a guide in this proceeding, and it becomes necessary therefore to determine the reasonable costs to the respondents of handling each species of livestock.

XVIII—Cost-Occasioning Factors in the Commission Business

104. A large part of the expenditures made by respondent firms consists of the salaries paid to the various employees and owners. In addition to the salaries there are those expenses which are incident to the conduct of an office, such as rent, heat, light, stationery and supplies, taxes, bond and insurance premiums, advertising, postage, travel, maintenance of horses and automobiles, and other miscellaneous items. As hereinbefore described there are definite functions performed by each respondent, such as yarding, selling, and accounting. To some extent each employee or owner is assigned to perform some definite function. At least each employee or owner is classified on the payroll as one performing some major function. However, the business is such that some of the personnel may not be busy at a time of day when others are fully occupied. The market does not open until eight o'clock in the morning and closes at three o'clock with respect to the selling of most classes of livestock. The salesmen often go to the yard early in the morning and assist the yardmen. Sometimes the office men assist in the yard in the forenoon and the yard employees frequently perform office work in the afternoon. The salaries of different classes of employees differ and the time of a more highly paid employee may sometimes be devoted to a function which is usually performed by lower paid employees.

105. The flow of livestock receipts to the market from day to day and from season to season has some effect on operating costs of respondent commission firms. This unevenness of flow of receipts makes it necessary to maintain an organization to handle the business during the heavier periods. Extra help can be obtained when required in the performance of office work and yard work. However, most [fol. 139] of the regular employees are employed on a monthly or an annual basis. It is not feasible for a commission firm to undertake to operate without a permanent organization. It is possible sometimes to obtain the services of a salesman in an emergency but such a practice is not pursued to any extent. The respondent commission

firms feel that when they find suitable salesmen who are satisfactory both to the firm and to the customers they cannot afford to let them go during periods when business is dull. The work of a salesman is especially important, both from the standpoint of rendering good service in the selling of livestock and his pleasing contact with the customers. It is difficult to obtain salesmen during emergencies which would satisfy these needs. The respondents do make some effort to control the flow of receipts of livestock to market by way of advice to customers in regard to the time to ship their livestock. However, this control does not appreciably affect the evenness or unevenness of the flow of livestock to the market. The respondent commission firms must be prepared to handle the business when it comes.

106. Perhaps the most important factor bearing upon costs as incurred by respondents is the size of the lots in which livestock is sold. The performance of some functions requires almost as much time for one [illegible] livestock in a separate lot as for a carload. A carload of one species of livestock belonging to one owner may be yarded, fed, watered, sold, and weighed in one lot. On the other hand, it may be necessary to sort the livestock in a car for ownership, or for grades and classes, or both. As the business is now conducted on the Chicago market much sorting seems to be required. The amount of sorting has increased over a period of years and that condition has been caused to a considerable extent by the cooperative shipping of livestock and the growth in the use of the motor truck for transportation of livestock. Buyers appear to be more selective in making their purchases and it is not possible to sell livestock of mixed grades to the extent that it was formerly done. The effect of these changes has been to increase the amount of work required of respondent commission firms in proportion to the amount of livestock handled. The following table consists of a summary of the business of all respondent commission firms for the year 1932, showing by method of arrival the volume handled and the number of head per draft, owner, and account sale or purchase:

(Here follows table, side folio 140.)

[fol. 140]

	Straight Cars		Mixed Cattle and Calves		Mixed All Species				Buying	
	S. O.	P. O.	S. O.	P. O.	S. O.	P. O.	Truck-Ins	Seconds	Rail	Truck-Out
Cattle:										
Cars	40,177	7,115	7,073	6,075	1,622	2,494	11,947	9,954	1,530	1,172
Decks	40,177	7,115	7,073	6,075	1,622	2,494	11,947	9,954	1,530	1,172
Head	1,002,873	187,157	196,306	167,402	42,575	64,531	297,297	248,738	51,298	36,305
Drafts	111,380	50,650	54,341	75,968	15,368	38,164	127,218	57,671	8,190	4,730
Owners	27,551	18,862	3,448	30,935	1,377	21,278	65,086	27,134	1,172	1,884
Account Sale	27,586	16,683	3,458	23,033	1,378	14,762	63,749	27,134	1,176	1,884
Head per Draft	9.00	3.69	3.61	2.20	2.77	1.69	2.33	4.31	6.26	7.67
Head per Owner	36.40	9.92	56.93	5.41	30.92	3.03	4.56	9.17	43.77	19.27
Head per Acct. Sale	36.35	11.22	56.77	7.26	30.90	4.37	4.66	9.17	43.63	19.27
Calves:										
Cars	148	49	801	876	611	1,502	1,313	101	17	19
Decks	162	62	802	877	611	1,502	1,313	101	17	19
Head	14,985	5,513	65,265	71,151	48,220	110,267	87,902	8,448	905	1,588
Drafts	414	790	13,540	25,041	5,630	30,716	54,945	1,919	49	176
Owners	157	999	3,393	25,309	1,187	46,525	37,287	946	14	86
Account Sale	157	875	3,402	19,228	1,182	32,504	36,184	946	14	86
Head per Draft	36.29	6.98	4.82	2.84	8.56	3.58	1.59	4.40	18.47	9.02
Head per Owner	95.44	5.52	19.23	2.81	40.75	2.37	2.35	8.93	64.64	18.47
Head per Acct. Sale	95.44	6.30	19.18	3.70	40.80	3.39	2.43	8.93	64.64	18.47
Hogs:										
Cars	15,545	13,655	.....	.....	2,260	5,673	15,891	3,026	517	23
Decks	20,546	18,062	.....	.....	2,793	6,840	15,891	3,026	844	23
Head	1,394,746	1,156,727	.....	.....	209,974	496,576	1,069,158	204,569	66,877	1,723
Drafts	59,029	90,751	.....	.....	15,762	52,223	148,848	8,441	1,695	109
Owners	14,632	76,642	.....	.....	1,843	49,301	83,139	4,748	463	47
Acct. Sale	14,648	58,550	.....	.....	1,843	34,313	81,647	4,748	463	47
Head per Draft	23.63	12.74	.....	.....	13.32	9.51	7.18	24.23	39.45	15.81
Head per Owner	95.32	15.09	.....	.....	113.93	10.08	12.85	43.08	144.42	36.66
Head per Acct. Sale	95.22	19.75	.....	.....	113.93	14.47	13.09	43.08	144.42	36.66
Sheep:										
Cars	8,648	1,910	.....	.....	270	419	2,142	537	725	117
Decks	15,941	3,138	.....	.....	408	667	2,142	537	1,343	117
Head	1,988,990	388,858	.....	.....	52,524	82,854	259,953	65,439	178,049	14,466
Drafts	24,955	16,574	.....	.....	3,371	9,779	31,061	1,980	1,725	307
Owners	5,638	8,716	.....	.....	420	6,335	13,917	1,101	583	159
Acct. Sale	5,640	5,867	.....	.....	422	4,434	13,523	1,101	583	159
Head per Draft	79.70	24.12	.....	.....	15.58	8.47	8.37	33.04	103.22	47.12
Head per Owner	352.78	44.61	.....	.....	125.06	12.49	18.67	59.43	305.40	90.98
Head per Acct. Sale	352.65	66.28	.....	.....	124.46	18.68	19.22	59.43	305.40	90.98

[fol. 141] Each draft does not always represent a separate sale for the reason that in some instances livestock of the same grade and class, arriving in the same consignment and belonging to several owners, may be sold together but weighed seperately. In abstracting from the books and records of the various firms the statistics relating to mixed shipments, including cattle and calves in the same consignment, the number of account sales and purchases and the number of owners were divided by the number of species consigned by each owner. The above table shows for such mixed shipments the number of owners and account sales determined by adding the fractions of divided ownership and account sales or purchases. For this reason the number of head per owner and the number of head per account sale and account purchase in the case of mixed shipments are shown to be greater than if a full unit of ownership had been assigned to each species in a shipment. The number of head per draft shown in the table reflects the extent to which all methods of arrival, including mixed shipments, are actually broken up into small lots for the purpose of weighing.

107. There is a variation among respondent firms as to the size of the lots in which livestock is handled. Some firms handle a larger proportion of straight rail consignments of livestock than is handled by other firms. The following table shows the extent of the variation in the number of head per draft and number of head per owner for the firms having the minimum and maximum average experience for each species handled:

	Per Draft		Per Owner	
	Minimum	Maximum	Minimum	Maximum
Cattle	1.66	7.04	3.75	24.82
Calves	1.	10.67	1.	23.79
Hogs	7.17	60.59	9.	207.47
Sheep	3.25	70.22	2.	241.71

XIX—Preparation for Determination of Costs

108. Preliminary to the determination of costs for 1931 and 1932, audits were made of the business done by each respective respondent commission firm. For the year 1932 similar audits were made of the business of each of the respondent order buyers who had a sufficient volume of

[fol. 142] business to warrant a unit study of operations. The preparation of these audits for 1931 and the gathering of statistics were done jointly by employees of the various respondent commission firms, and by trained and experienced accountants and clerks detailed by the Government. The audits for 1932 were prepared by the Government accountants and clerks. The bases for these audits and statistics were the books and records of the individual firms. The data gathered were the ending balance sheets for both 1931 and 1932, profit and loss statements for those years, reconciliation of net worth for both years, an analysis of the payrolls by individuals and functions for both years, and the number of cars, decks, head, accounts of sale and purchase, owners on accounts of sale and purchase, drafts, and drafts by mode of arrival. There were further compiled the monthly variation of volume by firms and for the market as a whole, the varying number of head per consignment by firms for a ten-month period in 1932, and the varying number of head per draft for each firm for two months in 1932. In addition to the audits for the years stated there was introduced into the record information showing the volume of livestock received at Chicago for all years from 1865 to 1932, the monthly receipts on the market for the years 1923 to 1932, the daily receipts on the market for the year 1932, the receipts direct to packers for the years 1923 to 1932 and the through shipments for the same period. The audits were accepted by the respondents as constituting a true reflection of the facts disclosed by their books and records for the period covered, although they contended that the item of owners' salary, as shown by the books, was not a true reflection of the worth of the services of these owners. From these audits and statistics the Government's chief accountant prepared for the years 1931 and 1932 a unit functional analysis of the operations of each firm, allocating to each species of livestock the income and costs which could be directly ascribed to it. He distributed the remainder of the expenses on what he considered appropriate bases. For the year 1932 he made a further analysis in which the total cost of each function was allocated to the various modes of arrival within a species for each particular firm.

109. Respondents' accountant prepared for both years time studies covering services in the yard and used these as

a basis for allocating the functional costs of selling, buying, and yarding. He prepared studies of operations for both years in which all costs were allocated directly to species [fol. 143] where possible. He used other appropriate bases for allocating those expenses not directly applicable to the handling of any one species. He also prepared studies showing the unit costs according to mode of arrival.

110. The rates hereinafter prescribed are based upon a general consideration of all facts of record. The functional unit costs set forth in this order are derived from an analysis of the business of each of the respondents for the year 1932. The year 1932 has been used for this purpose for the reason that it is that next preceding the one in which the hearing was held. The receipts for the year were lower than they were during the year 1931 and lower than they had been for a number of years previous. The use of a full calendar year gives due weight to the seasonal changes which take place in the marketing of livestock. A schedule of rates adequate to produce reasonable costs and reasonable profits in a low-volume year should not prove to be too low in those years in which an increase in volume occurs.

XX—Items Entering into Cost

111. Each of the accountants in making his analysis of the business of the respondents set up a classification of expenses and assigned to each classification certain items. There are three main classifications, namely, salaries, other expenses and interest. The salaries were classified as selling and buying, yarding, business getting and maintaining, office and administrative. The other expenses were classified under the headings of yarding, office, business getting and maintaining, administrative and general, and risk. Interest was calculated on the sound value of the fixed assets, including the value of the Exchange memberships, and on the inventory of supplies and the cash working capital equivalent to one month's expense allowance.

112. The owners of the respondent commission firms do not follow a uniform practice with respect to setting up salaries for themselves on their books. Some owners carry on their books a definite salary for themselves, others set up what may be designated as a drawing account, and others do not set up any allowance for themselves on their books.

The Government accountant took the amounts which the owners set up for themselves in the first two instances and in the third instance he classified the net profits as income to owners in the nature of a salary. Respondents [fol. 144] caused an appraisal to be made of the value of the services of owners. The amount so determined was substituted in lieu of all compensation paid to or withdrawn by an owner. In addition to the adjustment for these appraisal salaries a further adjustment was made in the case of certain respondents for administrative expenses. These administrative expenses were in addition to those incurred by the local office of these firms and covered such services as were rendered by the home office of these particular organizations.

113. In determining the items which should enter into the unit costs, Government accountant made certain adjustments in the expenses which had been taken from the books and records of the respondents and carried into the audits. Specifically, the items which were eliminated from income and expenses were interest and collection income and expenses, traders' commissions and clearance charges, country commissions, capital adjustments, clearance and loan salaries, charity and donations, personal life insurance, Exchange dues covering the cost of the conduct of the rate hearing, and items of expense on outside property such as farms and real estate. There were added to the expenses depreciation on fixed assets and insurance to cover furniture and fixtures, mortgage and theft insurance and workmen's compensation insurance. The depreciation adjustment was based upon the reproduction new value as determined by Government engineer, using standard and accepted life tables for the depreciable items. The insurance adjustment was made on the basis of rates supplied by a national insurance company. There was little, if any, issue between the accountants on these adjustments.

XXI—Method of Determining Proper Allowance for Owners' Services

114. In ascertaining the unit costs for salaries to be charged against the different functions the Government accountant used the salaries, drawing accounts, and profits of owners, as well as the salaries of those who were em-

ployed. He neither attempted to pass upon the reasonableness of such salaries, drawing accounts, or profits of owners, nor recommended the inclusion of those of the owners in the costs to be used as the basis for determining reasonable rates. In this proceeding it is not contended by anyone that these owners' salaries, drawing accounts, and profits, should be used as an element of cost or as a [fol. 145] basis for determining the reasonableness of the allowance to owners. It is recognized that some proper allowance should be made for the services of owners. If this is not done the cost of performing certain functions for many firms will be extremely low or based upon out-of-pocket expenses only. Unit costs arrived at on such a basis would not make it possible to determine a fair normal unit cost for any function in which owners' salaries constitute a part of the expense. In these circumstances the question becomes one of determining the amounts to be substituted. As hereinbefore stated the respondent members of the Chicago Livestock Exchange substituted salaries determined by a committee of five selected by them. Three members of this committee were officers of banks doing business at or near the stockyards. A fourth member of the committee is engaged in conducting a horse and mule business at the Union Stock Yards. The fifth member of the committee is secretary of the American Aberdeen Angus Breeders Association, which is an organization of breeders of purebred livestock with offices at the Union Stock Yards. All members of the committee have been engaged in business and located at the stockyards for a considerable period of time and are personally acquainted with many of the owners of respondent commission firms. All members of the committee with the exception of the one last referred to appeared at the hearing and were presented for cross-examination. The chairman of the committee testified in chief with respect to the procedure followed by the Committee in appraising the services of owners. In performing its work the committee was given a statement containing certain information with respect to each individual owner and his firm. This statement shows the age, the specific duty or duties, and whether the owner is a stockholder, member of a partnership, or an individual proprietor. It also shows the number of head of each species of livestock handled and the value of the same. It shows

the number of years in which the individual has been in business with his present firm, with other firms, and in other or related businesses. In addition to the foregoing information the statement contains a distribution of the individual's time on a percentage basis to the various functions performed by him for his firm. Some one or more members of the committee were acquainted with the individuals whose services were appraised. The appraisal was an attempt to evaluate persons rather than services. This appraisal of the person took the form of estimating what [fol. 146] a man is worth to his firm largely on account of his acquaintanceship with the trade and his ability to attract business to his firm. It is clear from the testimony that the salaries of the different owners were appraised at a high or low figure in proportion to the volume of business handled by their respective firms. The testimony also discloses that the committee gave weight to the salaries which in its opinion these owners could command if they were to be employed by other commission firms, although they did not have before them any information as to salaries being paid on the market for similar services performed by those whose salaries are determined on a bargain basis.

115. This appraisal cannot be accepted as a basis for determining the proper allowance for owners' services. This committee did not possess any peculiar qualifications for making this appraisal. Even if the appraisal of services such as these could be considered as a matter determinable by expert opinion, any generally well-informed citizen with the information at his disposal which the committee had before it could make an equally trustworthy appraisal. The rejection of the appraisal method used by the respondents rests upon the further and more fundamental ground that the method seeks to place upon each respondent worker an annual value based upon such record of his past performance as was before the committee. In other words, the appraisal attempts to fix a wage for owners. Upon this basis each owner would be entitled to his appraised value and no more, regardless of his future accomplishments, and no less, regardless of the small amount of service which he may render.

116. The record offers a much simpler and fairer method of determining a proper allowance for the services of own-

ers to be covered into reasonable costs. It contains all the information which the committee had before it and in addition many other facts pertinent to the determination of the cost of the services performed by owners. The committee gave consideration to what in their opinion owners could obtain if they were to offer their services on a bargained basis to other firms. The record shows what those employees actually do receive for their services in a market where services such as those rendered by owners are being bought and sold. The prices at which such services are bought and sold are generally regarded as the proper test to be applied.

[fol. 147] XXII—Reasonable Unit Costs Plus Reasonable Unit Profits To Be Covered into Reasonable Commission Rates

117. The Packers and Stockyards Act directs the Secretary of Agriculture to prescribe just, reasonable, and nondiscriminatory rates and charges if it is found after a full hearing that a schedule of rates and charges is unjust, unreasonable, or unjustly discriminatory. As hereinbefore stated the test to be applied in this case is whether respondents' rates and charges are in excess of the reasonable costs of doing business plus a reasonable allowance to cover management and risk. An analysis of the unit costs of the various respondent firms shows that there is a wide variation in these costs. The Government cost study shows for cattle and calves that the per head cost for the low firm is 23.60 cents and that for the high cost firm $1.715. For hogs the low firm shows a cost of 4.29 cents per head; the high firm 59.22 cents. For sheep the low cost firm shows 5.21 cents per head and the high cost firm 78.65 cents per head. The average cost to all firms cannot be accepted as the proper criterion for determining reasonable costs for the reason that an average has in it the inherent defect of incorporating extravagant expenditures, if any, and expenses arising from uneconomical methods of operation. The unit costs of many of the firms are high because the volume of business coming to the market is divided among so many firms and the organizations maintained are larger than necessary to handle it. Obviously, it would be unfair to respondents to adopt the unit cost of that firm which has the lowest unit cost of performing any given function. On the other hand,

it would be unfair to the shipper to charge him rates which would cover the cost of doing business as incurred by the firm having the highest unit cost for performing a given function. Under these circumstances the method here pursued is to determine a normal cost by the exercise of judgment upon all the facts of record, including the unit costs incurred by each firm in the performance of the several functions.

118. This method has been used by the Secretary in previous commission rate determinations. Respondents in these proceedings have undertaken to point out defects in this method and, as their chief criticism, state that there has not been included in the findings in previous orders any definite statements by the Secretary showing a specific, statistical method of procedure used by him in arriving at [fol. 148] reasonable unit costs. They contend that the Secretary should adhere closely to actual experience in arriving at reasonable unit costs, unless there are peculiar reasons for not doing so. They have suggested possible statistical methods to be followed. The first of these is the median, which is the unit cost for that firm above which there are as many firms with higher costs as there are below with lower costs. Another method is the bulk line whereby a certain percentage of firms would be eliminated from consideration. For example, if the 80% bulk line were to be adopted, those firms with the highest unit costs doing 20% of the total volume of business would be eliminated entirely from consideration. Under such circumstances, the unit costs selected as reasonable would be the highest unit cost of any of the remaining firms. Statistical tables were introduced for the purpose of showing respondents' unit costs according to the various bulk lines ranging from 10% to 90%. A third method proposed is some form of an average unit cost for the market with a percentage deviation. Somewhere within this zone of deviation a unit cost would be selected as reasonable. Respondents admit that in the use of any method reasonable judgment must be exercised. In the methods proposed by them, the exercise of judgment is confined largely to the selection of a statistical method of procedure. If the bulk-line method is adopted, it then becomes necessary to determine what bulk line is reasonable to use. If the market average with the percentage of deviation is adopted, it then becomes neces-

sary to determine what is a reasonable deviation from average. The validity of the conclusions reached under any one of these methods depends on the reasonableness of the judgment exercised. Under the methods suggested by respondents, judgment ceases to operate after the method of procedure is selected. Under the method herein adopted, all the advantageous features of the methods proposed by respondents are preserved and, at the same time, the opportunity for the exercise of judgment with respect to the details of the business of each individual firm is retained.

119. In general the expenses incurred by respondent firms fall into two classes. (1) There are those expenses which the conditions of the business tend to hold down. In this class are those expenses incurred for the performance of functions such as yarding and office work in which the persons employed are retained for the particular work to be performed and not for the amount of business which they may draw to the firm. (2) The second class of expenses is [fol. 149] that in which the factor of control of business tends to increase the expenses of doing business. In this class are such expenses as those of salesmanship, and business getting and maintaining. Expenses as actually incurred by any or all of the firms for these items do not furnish an adequate guide to the reasonableness of such costs. In arriving at a reasonable unit cost on account of these functions some additional procedure must be adopted. In the following paragraphs findings are made with respect to the reasonable allowance for unit costs for the performance of the various functions and the methods employed in arriving at those findings are shown.

Salesmanship

120. The function of selling and buying is performed on the Chicago market by owners of market agencies and by salesmen employed by them on a salary basis. This is one of the important items for which an allowance must be made in the reasonable unit costs. Certain practical problems confront the rate maker at this point. If the existing schedule of rates has been too high, the natural effect of it has been to attract more agencies into the business than are warranted. As heretofore shown, there is no competition in rates among respondents on the Chicago market. The Packers and Stockyards Act does not grant the Secretary

of Agriculture authority to determine how many firms would be required to handle the business properly, or what specific firms should be engaged in business, or whether some firms are unwisely continuing in business. The selling and buying of livestock require greater skill and judgment than the performance of any other of respondents functional activities, with the possible exception of management. The proportion of owners, as distinguished from employees, engaged in this activity is relatively large. The owners of firms are usually those who have established a more or less extensive acquaintanceship with producers and shippers of livestock and by reason of that personal acquaintanceship attract some business. Some of the employed salesmen also have a personal following in the country and are able to control some business. In numerous cases the compensation of employed salesmen is based in part at least upon their ability to draw business to the firm. Some salesmen are employed on the basis of a certain stipulated salary plus a certain percentage of the commissions realized from the business which they control and draw to the firm. [fol. 150] In the case of some other salesmen their compensation is based solely upon a percentage of the commissions realized from the business controlled by them. The compensation of approximately 25 per cent of the salesmen employed by the respondent commission firms in 1932 was based wholly or in part on a percentage of the commission received from the business controlled by them.

121. There are those firms which do not maintain a complete organization for handling their business. They may obtain the services of some other commission firm to perform their office work and some of the yard functions, including both yarding and selling. There are other instances in which all services are performed for the owner or owners by other commission firms upon a percentage basis. In such instances the owner or owners maintain firm identities in order that they may retain control of the business which they have been able to establish. Such firms usually handle a relatively small amount of business and their efforts are usually devoted to one particular species. The record does not disclose the volume of business handled by each salesman on the market. The information with respect to the sales of livestock is not kept by the respondent firms in such a manner as to reveal that fact. There is

a wide variation in the average performance per salesman, per firm, on the market. There is contained in the statistical study for 1932, prepared by Government accountants, a calculation in which there is applied to the number of cars or car equivalents the time spent by all salesmen and buyers in selling and buying, reduced to a man-year basis. This calculation shows a variation in the number of cars of cattle and calves handled from 12 to 1,668; hogs from 16 to 1,857; sheep from 114 to 2,485.

122. The rate payer should not be expected to pay in the form of rates an amount for the services of a salesman in selling his livestock greater than is necessary to employ a salesman of first-class ability, handling a volume of business which will utilize his time with a reasonable degree of efficiency. In this proceeding some salesmen testified that they might spend an entire day showing a few head or a few carloads of livestock, and that the entire trading period would be required to sell them. However, that fact does not establish the efficiency of such salesmen for the reason that they could possibly have shown and sold other livestock at the same time. The volume of business which a salesman can efficiently handle is an important [fol. 151] factor in the determination of a reasonable allowance to be made for salesmanship. Respondents themselves do not contend that the rate payer should pay rates which would sustain at a living wage a salesman who could handle only one car a year. Others testified that if a salesman did not have more than 50 cars a year he should get off the market. Confronted with these conditions, the question arises as to what is the criterion to be adopted for a reasonable salesmanship performance. The owner salesmen and employed salesmen of respondent commission firms are, as a result of years of experience, qualified to express opinions with respect to a reasonable salesmanship performance. They are familiar with the conditions under which livestock is sold from day to day, from week to week, from month to month, from year to year, on the Chicago market. In commission rate proceedings heretofore held under the Packers and Stockyards Act opinions have been obtained from salesmen with respect to this question. The facts as to potential salesmanship capacity lie peculiarly within the knowledge of those who are actually engaged in selling livestock or who through long observation and familiarity

with selling operations on the market are qualified to express opinions. With few exceptions witnesses, members of respondent firms in this proceeding, engaged in selling livestock were not frank to express their opinions, but on the contrary many of them declined to express an opinion or stated that they could not give an opinion. A careful reading of the record leads to the conclusion that this attitude on the part of the witnesses was brought about in part at least by the type and character of objections which respondents' counsel made on substantially all occasions when the question with respect to potential selling capacity was asked. It is apparent from the record that this failure on the part of the witnesses to testify with respect to the matter in question was the direct result of the improper and illegal character of the objections made, which had the effect of instructing the witness not to answer the question. In fact, it appears from the record that it was the deliberate intent of counsel to prevent the development of testimony with respect to potential selling capacity for the reason that in some instances respondents' counsel pointed out to the witness that such testimony had been used in other commission rate cases where commission rates had been reduced, and instructed the witness to remember that if he answered the question it might result in a reduction of his rates in this proceeding. In this connection the [fol. 152] language of the Supreme Court is singularly appropriate as used in the case of Knoxville v. Knoxville Water Co. (212 U. S. 1, 18) where it is said "* * * the companies to be regulated will find it to their lasting interest to furnish freely the information upon which a just regulation can be based."

123. The allowance for the unit cost of salesmanship should be sufficient to compensate adequately those salesmen who handle and sell such a volume of business as will utilize their time efficiently on the market, giving due consideration to the fluctuations in the business from day to day, from month to month, and from season to season. This principle involves the determination from the evidence what volume it would be reasonable for such a salesman to handle and what would be a reasonable salary for such a salesman. The allowance for salesmanship made in this order contemplates that such salesmanship will be of a high character whether performed by owners or employed

salesmen. A shipper is entitled to have his livestock sold by the most competent and efficient salesmen available. The salesmen of each of respondent commission firms are endeavoring to render the very best possible service to their customers. The chief factor in the success of a commission firm and its ability to hold business is the satisfactory character of the service rendered. Each respondent commission firm feels that its service in selling livestock so as to net the shipper the most money is not surpassed by similar services rendered by other firms on the market. Such salesmen, whether owners or employees, are entitled to receive a fair reward for their ability.

124. There is evidence in the record as to what would be a reasonable performance to expect of a salesman if he received all the livestock which he could sell. This is true notwithstanding the fact that many salesmen declined to express opinions as to their potential selling capacity. However, many of those who testified stated that they could sell efficiently as many head of livestock as any other competent salesman on the market. In some instances salesmen stated that they had not had all the livestock which they could sell. It does not appear from the record that any of respondent firms have refused to receive livestock because they had more than they could handle. There is testimony in the record with respect to the average annual performance of salesmen for each firm, as well as the actual performance of certain individual salesmen on specific days.

[fol. 153] 125. One salesman testified that on the Monday previous his firm had received about 400 head of butcher cattle, which would amount to about 18 or 19 loads. He stated that he and another butcher salesman sold all of these cattle on the day that they arrived. He also stated that there were several Mondays representing the peak days in the fall of the year when his firm had received 30 or 40 loads of butcher cattle and that he himself might sell half or less than half of that number. He stated that if he had one load or 19 loads, he would be trying to get just as much for each individual head for the shipper. It is his testimony that he could handle the amount of cattle that came to his firm. Another witness stated that he had sold four carloads of cattle in one day and had sold out by

noontime and if he had had two more loads that day he could have sold them. It was his well-formed opinion that he could sell six loads of cattle in a day. He stated that if he should get 10 loads of cattle, he would go out and sell them and would not hire any extra help in selling them but that he might require some extra help in yarding. This estimate applied to all kinds of cattle. Another witness gave it as his opinion that a good salesman should be able to sell 25 carloads of steers in a day. A witness who is a representative of a livestock producers organization testified that in his opinion a cattle salesman should handle 2,000 cars of cattle in a year and a hog salesman should handle an equal number of hogs in a year. This witness has had experience in shipping a great many cattle and hogs to the markets at Omaha and Chicago and has spent considerable time on the markets observing the sale of livestock. A cattle salesman testified that over the course of a year a salesman could sell five carloads of steers per day if the market is right. He stated that during the present summer he had seen salesmen sell as many as 10 carloads in a day. The owner of one of the large commission firms testified that taking the average of the market as cattle come, he and two salesmen could sell 15 cars per day. The calf salesman for this firm testified that he had handled about 1,500 calves on one day in 1933 and that his assistant had sold only a few out of that number. The owner of one of the respondent commission firms whose business is being cleared by another firm testified that he would want 150 carlots of cattle per month in order to set up his own organization. He stated that it would depend upon the kind of cattle whether he would need an extra salesman. At the time the witness was testifing he had an assistant [fol. 154] acting as a yardman who sold some cattle. The witness stated that if he had four loads of steers and four loads of mixed cattle, he would need help. Another witness testified that on a decent market a salesman might sell 20 loads of cattle in the same time that it would take to sell two to four loads on other days. Another salesman estimated that he sold 40 per cent of the cattle for his firm, which received 2,512 cars or carlot equivalents in 1932.

126. A hog salesman stated that the number of hogs which he could handle would depend upon the number consigned

to him and that he had never failed to sell all the hogs that were put in his possession to sell. Another hog salesman stated that he would not want personally to have to handle over eight or ten loads of hogs a day. He stated that if he received more than that number he would have to hire help. Another salesman stated that he could sell ten loads of butcher hogs per day where each load belonged to a different owner. Another witness stated that his assistant, who is a yardman, sold about 5 per cent of the hogs received by his firm in 1932. This firm handled 79,505 hogs for itself and 17,608 hogs for another firm. Another witness testified that on one day of the month of July his firm had 1,300 head of hogs which were sold by two salesmen.

127. A witness who is a representative of a livestock producers organization and has had extensive experience in shipping livestock to central markets stated that he had seen one salesman sell 18 or 19 double-deck cars of sheep in one day. His observation covered consignments containing as much as five or six cars each and he stated that it would in his opinion require more time to sell the same number if they were single car consignments than if they were consignments of five or six cars. Another witness, who is a sheep salesman, stated that he had sold as high as 15 carloads of sheep in a day alone and unaided. The same salesman stated that he had purchased as high as 10 cars of sheep in one day on order.

128. A salesman's primary work requires that he devote as much of his time as is necessary to the performance of his selling function. The duties of yarding, and business getting in the field are secondary. Both the accountant for the Government and the accountant for the respondent made calculations on actual performance. The Government accountant in his calculation considered only the time actually spent in the selling or buying function, eliminating [fol. 155] such time as was spent in yarding and business getting. The accountant for the respondents considered in his calculation the full time of the salesmen as having been spent in selling without eliminating any time spent in the yard performing other duties and in the field soliciting business. Under the Government accountant's calculation for the year 1932, nine firms had an average performance

per salesman of from 876 cars to 1,668 cars for the species cattle and calves; for 1931, 12 firms had a similar performance, ranging from 893 cars to 1,549 cars. Under respondent's accountant's calculations, three firms had an average performance per man ranging from 884 cars to 1,139 cars. The calculation for the firm having 1,139 cars per salesman is based on five salesmen. Should the calculation for this firm be based on four salesmen, the number shown on its payroll, the performance would be 1,424 cars per man. On a monthly basis some firms had a performance per man ranging from 2,400 head to over 4,200 head. An exhibit prepared by respondents' accountant shows for the firms covered in the time-study period the average daily performance per salesman for the species cattle and calves of from four to fifteen cars.

129. For the species hogs, Government accountant's calculation for the year 1932 shows 13 firms having an average performance per salesman ranging from 871 cars per man to 1,857 cars per man. For the year 1931, 19 firms averaged per salesman from 896 cars to 1,787 cars. Respondents' accountant's calculation for hogs shows that one firm handled 903 cars per man in the year 1932. On a monthly basis the volume per salesman of some of the high-performance firms ranged from 7,500 head per man to 20,000 head per man. The daily performance shown in respondents' cost study for various firms during the time-study period ranged from 4 to 9 cars per man per day. Some 50 instances of such performance occurred during the time-study period.

130. In 1932, 14 firms had regularly employed sheep salesmen. The Government study for this year shows a performance for sheep salesmen for 3 firms ranging from 1,195 cars to 2,485 cars. For 1931, 5 firms showed an average performance per man ranging from 954 cars to 2,555 cars. Respondents' study for the year 1932 shows 2 firms which had a performance of 1,087 cars per man and 1,111 cars per man. On a monthly basis for the year 1932, the Government's calculation shows a performance per man ranging as high as 94,000 head. Respondents' time-study [fol. 156] shows an average daily performance per man in selling sheep ranging from 4 cars to approximately 10 cars. The average number of head per car used by the Govern-

ment in ascertaining volume in car-lot equivalents was 29 head for cattle and calves, 82 head for hogs, and 201 head for sheep.

131. The character of the livestock commission business is such that employed salesmen generally have to be hired for a full year and owner salesmen have to stand ready to sell at all times during the year. What the owner earns for himself, or what he can afford to pay an employee salesman under any schedule of rates, depends upon how much livestock he receives to be sold. The volume sold by a salesman is not the sole test of his efficiency. One salesman may sell half the number of cars of livestock sold by another and sell them equally well, but he cannot expect to receive as much for his year's work as does the latter salesman or as much as he himself would receive if he sold a greater volume of livestock. Under any other assumption, like selling service on the same market would cost one shipper more per car or per head than it would another. The record shows that there is a relationship between the amount of selling done and the salaries received. The appraisal committee recognized this association and placed its highest appraised salaries upon owners whose firms received the largest volume of livestock. In arriving at a reasonable per-head cost to be carried into a reasonable schedule of rates, it is necessary to determine what salaries it would be fair and reasonable to associate with different sales volumes.

132. The record contains information showing the number of employed salesmen on the yards in 1931 and 1932, together with the salaries paid to them. In some instances it is difficult to determine from the evidence whether an individual should be classified as a salesman or a yardman. Based upon the classification made by the respondents themselves there were approximately 124 employed cattle salesmen in 1931 and 115 employed cattle salesmen in 1932, 71 hog salesmen in 1931 and 61 hog salesmen in 1932; and 21 sheep salesmen in 1931 and 16 sheep salesmen in 1932. The variation in the number between the two years in each instance may be in part due to a change in classification of some individuals who spend part of their time in selling and a part of their time in yarding or performing other functions. The following table shows the salary range and the

number of salesmen coming within each salary group for [fol. 157] each species of livestock:

Cattle Salesmen:

	1932	1931
No. receiving $6,000 or more	15	24
5,000 to 6,000	10	7
4,000 to 5,000	14	20
3,000 to 4,000	29	30
2,000 to 3,000	32	26
Less than 2,000	15	17
Total	115	124

Hog Salesmen:

No. receiving $6,000 or more	0	5
5,000 to 6,000	6	9
4,000 to 5,000	12	10
3,000 to 4,000	17	21
2,000 to 3,000	18	13
Less than 2,000	8	13
Total	61	71

Sheep Salesmen:

No. receiving $6,000 or more	2	2
5,000 to 6,000	2	1
4,000 to 5,000	1	1
3,000 to 4,000	3	4
2,000 to 3,000	7	9
Less than 2,000	1	4
Total	16	21

133. In order to earn these salaries the employed salesmen performed actual selling and handling of livestock in the yards and spent time in the country doing appraisal and publicity work. Some spent more time in such outside work than others. Most of them also did some office work, such as carrying on correspondence with their customers. Many of them did some work in the yard in connection with the sorting, driving, watering, feeding, and weighing of livestock. These salaries in many cases represent a man's

worth to the firm from the standpoint of the volume of business which he can attract. Some of these salaries are based upon a percentage of the commissions realized by the firm from the business controlled by the salesmen. In other [fol. 158] instances the salaries represent a stated monthly or weekly payment plus a percentage of the commissions realized from the business controlled. The owner of one of the respondent commission firms testified that some of the big firms have salesmen working for them who are being paid larger salaries than he could afford to pay but that in his opinion those salesmen probably could not sell cattle as well as his salesmen. He further stated that some of the firms pay larger salaries because the men are drawing enough business in order to permit them to pay such salaries. It was his opinion that his salesmen were as efficient as any on the yards. This witness is paying his best employed cattle salesman $3600 and hog salesman $3640 a year. He stated that he regarded his salesmen as efficient as any other salesmen and if they were not, he would employ salesmen who were as efficient as any others.

134. The salaries of the employed salesmen are the result of bargaining and afford a fair test of what salesmanship can be purchased for in the open market. Many of the owners of respondent commission firms act as salesmen. The quality of the service in selling livestock rendered by employed salesmen and owner salesmen is generally the same. Owners have other responsibilities and activities in connection with the management of their firms for which they are entitled to receive remuneration and for which an allowance is hereinafter made in determining reasonable unit costs. From the facts with respect to the salaries paid to employed salesmen, an allowance for salesmanship is determined as reasonable for the performance of that service, regardless of whether it is performed by owners or employees. Upon consideration of the conditions under which salesmanship is performed on the Chicago market, the fluctuation of receipts from day to day and from season to season, the volume of livestock handled by the respective firms, the volume handled by various salesmen in a year, month, or day, and the estimates of witnesses as to what can be expected of a salesman, it is found that it is reasonable to associate a salesmanship performance of 27,000 head or above of animals of the bovine species with a

salary of $4,500 and up; a salesmanship performance in the case of hogs of 87,000 head and above with a salary of $3,600 and above; and a salesmanship performance in the case of sheep of 270,000 head and above with a salary of $4,000 and above. The selection of the salary and the salesmanship performance to be associated with it places no limitation upon what any salesman can do or may earn. It [fol. 159] determines a reasonable per-head salesmanship cost to be covered into a reasonable schedule of rates applicable to a unit of service. What a salesman may earn depends upon his skill and ability and the volume of livestock available for him to sell. On the basis of all the facts in the record, it is found that the following constitute reasonable per-head costs to be covered into rates on account of salesmanship:

Cattle and calves	$.1667
Hogs	.0414
Sheep	.0148

Yarding Salaries

135. The handling of livestock in the yard occasions expenses on account of salaries paid to those who do the yarding. The accountant for the Government allocated direct to species yarding salaries paid in 1932. The per-head cost of yarding salaries on account of each species, irrespective of mode of arrival, is shown in the following tables:

[fol. 160] Cattle and Calves

Firm No.	No. of head	Yarding Salaries	Firm No.	No. of head	Yarding Salaries
72	4,442	$.0007	87	9,396	$.0798
47	1,271	.0008	32	1,792	.0800
103	24	.0020	6	29,701	.0803
5	2,007	.0146	26	26,031	.0830
29	14,426	.0171	78	13,542	.0873
12	7,814	.0198	65	1,342	.0875
85	13,132	.0236	1	1,095	.0892
77	74,220	.0284	56	62,105	.0893
46	3,130	.0354	35	4,533	.0895
39	1,449	.0375	4	148,819	.0912
31	1,033	.0395	45	87,528	.0905
7	177	.0484	80	36,342	.0911
17	412	.0446	61	19,481	.0919
42	14,365	.0507	24	48,754	.0926
96	27,143	.0522	19	32,630	.0933
59	18,933	.0523	75	38,604	.0935
54	32,657	.0530	40	27,389	.0941
9	3,466	.0594	14	121	.0947
86	2,330	.0600	70	51,037	.0966
76	658	.0604	89	495	.1020

Cattle and Calves—Continued

Firm No.	No. of head	Yarding Salaries	Firm No.	No. of head	Yarding Salaries
16	28,931	.0622	8	14,096	.1020
10	59,159	.0634	3	4,198	.1022
43	39,217	.0642	99	51,593	.1049
51	158,140	.0649	36	11,002	.1056
104	18,357	.0660	2	15,626	.1069
48	59,659	.0664	94	10,146	.1078
92	34,140	.0672	100	163,862	.1080
69	20,655	.0679	82	5,988	.1082
30	47,364	.0686	62	21,349	.1088
84	2,066	.0690	73	25,474	.1101
34	32,711	.0708	11	63,219	.1106
27	6,286	.0723	95	3,094	.1135
81	49,487	.0730	38	34,477	.1168
67	5,524	.0733	74	4,862	.1220
63	36,768	.0744	79	15,231	.1220
83	32,162	.0747	15	855	.1255
22	19,987	.0758	68	2,694	.1272
71	66,384	.0760	23	42,362	.1280
91	1,515	.0764	58	48,511	.1316
20	47,832	.0766	111	3,433	.1326
18	149,778	.0776	52	4,224	.1358
44	1,069	.0776	41	287	.1371
21	47,508	.0778	98	519	.1383
88	581	.0782	50	7,683	.1400
55	26,343	.0783	37	19,767	.1444
101	2,748	.0789	28	13,785	.1582
66	141,218	.0792	64	6,888	.1711
102	565	.0793	60	1,344	.2017
97	39,467	.0797	93	23,089	.2020
33	60,917	.0798	13	3,608	.2378

[fol. 161]

Hogs

47	13,693	$.0005	63	80,027	$.0319
72	963	.0034	1	3,805	.0320
71	71,538	.0054	10	66,307	.0321
9	17,359	.0087	91	23,168	.0338
80	12,884	.0112	51	88,192	.0342
103	65	.0115	19	93,622	.0344
69	51,034	.0117	79	5,118	.0349
45	117,651	.0148	93	85,572	.0349
26	40,243	.0164	61	38,784	.0350
74	6,234	.0176	2	51,946	.0351
77	74,638	.0135	40	50,850	.0355
12	8,434	.0147	44	16,616	.0359
55	57,814	.0168	50	14,098	.0360
3	7,185	.0199	100	508,264	.0367
7	402	.0204	68	10,812	.0373
41	905	.0207	48	153,661	.0376
97	95,077	.0219	28	31,688	.0378
35	25,879	.0228	73	48,534	.0378
102	9,299	.0229	83	49,372	.0383
56	19,909	.0239	66	129,004	.0385
111	2,898	.0242	38	48,126	.0414
36	4,724	.0243	58	64,913	.0416
18	116,479	.0245	43	47,412	.0419
20	93,825	.0245	76	7,306	.0428
99	249,755	.0248	21	100,545	.0429
11	105,011	.0252	96	44,653	.0437
34	116,999	.0252	92	56,246	.0439
16	51,783	.0256	33	74,722	.0440
49	7,584	.0258	81	44,727	.0466
4	104,236	.0262	84	17,200	.0476

Hogs—Continued

Firm No.	No. of head	Yarding Salaries	Firm No.	No. of head	Yarding Salaries
23.....	77,905	.0267	46.....	2,806	.0483
14.....	14,152	.0270	27.....	21,610	.0494
24.....	53,757	.0273	15.....	13,784	.0497
85.....	43,221	.0277	98.....	505	.0497
86.....	10,591	.0277	37.....	65,748	.0519
6.....	76,895	.0280	104.....	14,756	.0543
5.....	1,491	.0281	52.....	1,819	.0561
42.....	74,736	.0283	70.....	45,980	.0578
62.....	53,334	.0285	60.....	1,499	.0603
82.....	78,040	.0286	75.....	16,036	.0632
64.....	14,820	.0287	32.....	1,809	.0644
29.....	49,458	.0288	8.....	10,288	.0680
54.....	63,713	.0291	13.....	11,296	.0705
65.....	8,751	.0294	30.....	24,616	.0711
87.....	30,059	.0296	67.....	3,742	.0740
95.....	2,167	.0296	94.....	7,157	.0806
78.....	55,012	.0299	101.....	728	.1192
22.....	118,620	.0313	59.....	8,395	.1264
39.....	18,252	.0313	17.....	2,699	.1534
88.....	1,266	.0315			

[fol. 162]

Sheep

2.....	4,637	$.0006	78.....	16,362	$.0110
81.....	59,563	.0007	16.....	4,605	.0111
79.....	970	.0016	3.....	321	.0115
44.....	1,323	.0028	97.....	16,681	.0115
86.....	358	.0028	9.....	1,149	.0116
103.....	67,201	.0042	35.....	1,255	.0116
14.....	13	.0046	92.....	8,560	.0119
33.....	11,959	.0047	42.....	4,065	.0122
93.....	19,958	.0047	55.....	12,827	.0122
62.....	26,891	.0050	76.....	209	.0124
83.....	19,063	.0050	66.....	105,764	.0125
45.....	32,843	.0053	30.....	4,715	.0127
82.....	852	.0055	73.....	6,301	.0127
57.....	631,599	.0058	13.....	1,441	.0131
54.....	5,073	.0059	1.....	372	.0134
50.....	939	.0063	12.....	3,409	.0136
32.....	860	.0066	48.....	12,275	.0139
96.....	7,676	.0066	20.....	6,367	.0147
56.....	9,554	.0069	63.....	6,249	.0153
29.....	62,402	.0071	8.....	1,252	.0155
6.....	9,431	.0074	102.....	252	.0157
4.....	132,822	.0075	64.....	1,109	.0158
46.....	827	.0075	24.....	2,676	.0159
59.....	1,037	.0075	26.....	2,[illegible]	.0162
21.....	29,199	.0076	19.....	9,233	.0170
80.....	14,021	.0078	40.....	4,634	.0171
36.....	4,257	.0082	87.....	2,295	.0174
65.....	587	.0083	11.....	6,931	.0175
91.....	1,923	.0084	5.....	468	.0179
18.....	515,982	.0087	37.....	2,521	.0179
94.....	944	.0092	39.....	145	.0183
10.....	148,745	.0092	61.....	2,082	.0184
90.....	273,314	.0092	77.....	16,490	.0185
99.....	135,425	.0092	111.....	1,956	.0187
100.....	397,609	.0099	72.....	45	.0196
104.....	1,291	.0100	23.....	2,525	.0197
28.....	3,493	.0102	43.....	1,818	.0211
22.....	7,922	.0103	85.....	1,495	.0220
51.....	34,211	.0103	17.....	90	.0250

Sheep—Continued

Firm No.	No. of head	Yarding Salaries	Firm No.	No. of head	Yarding Salaries
38	6,749	.0105	84	348	.0258
58	13,161	.0105	75	2,930	.0277
70	3,828	.0105	74	89	.0281
7	119	.0106	27	1,021	.0297
71	142,503	.0106	88	51	.0300
69	5,726	.0109	15	369	.0503
34	6,444	.0110	68	273	.0528
			52	151	.2087

[fol. 163] On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding salaries are as follows:

$.0725 per head as to cattle and calves
.0280 per head as to hogs
.0085 per head as to sheep

Yarding Expenses

136. The per head cost of yarding expenses, consisting chiefly of expenses for horse and saddle and yard supplies, is as follows for each species:

Cattle and Calves

Firm No.	No. of head	Yarding Expenses	Firm No.	No. of Head	Yarding Expenses
2	15,626	$.0002	61	19,481	$.0078
94	10,146	.0002	11	63,219	.0083
30	47,364	.0003	99	51,593	.0083
29	14,426	.0005	70	51,037	.0094
73	25,474	.0005	97	39,467	.0094
26	26,031	.0006	97	38,604	.0095
48	59,659	.0006	51	158,140	.0108
59	18,933	.0007	58	48,511	.0113
82	5,988	.0007	66	141,216	.0113
22	19,987	.0011	4	148,819	.0117
24	48,754	.0011	34	32,711	.0117
40	27,389	.0014	38	34,477	.0117
56	62,105	.0016	54	32,657	.0132
45	87,528	.0020	81	49,487	.0133
37	19,767	.0024	83	32,162	.0150
18	149,778	.0038	96	27,143	.0151
42	14,365	.0039	92	34,140	.0153
100	163,862	.0042	69	20,655	.0158
77	74,220	.0043	10	59,159	.0163
63	36,768	.0057	62	21,349	.0168
93	23,089	.0059	6	29,701	.0170
33	60,917	.0060	19	32,630	.0200
71	66,384	.0060	55	26,343	.0210
104	18,357	.0061	43	39,217	.0219
13	3,608	.0065	80	36,342	.0240
20	47,832	.0065	23	42,362	.0245
16	28,931	.0067	12	7,814	.0461
21	47,508	.0077			

[fol. 164] Hogs

Firm No.	No. of head	Yarding Expenses	Firm No.	No. of Head	Yarding Expenses
2.....	51,946	$.0001	97.....	95,077	$.0004
10.....	66,307	.0001	104.....	14,756	.0004
16.....	51,783	.0001	51.....	88,192	.0005
26.....	40,243	.0001	99.....	249,755	.0005
30.....	24,616	.0001	37.....	65,748	.0007
34.....	116,999	.0001	13.....	11,296	.0008
38.....	48,126	.0001	23.....	77,905	.0008
43.....	47,412	.0001	70.....	45,980	.0008
81.....	44,727	.0001	73.....	48,534	.0008
94.....	7,157	.0001	75.....	16,036	.0008
19.....	93,622	.0002	92.....	56,246	.0008
48.....	153,661	.0002	4.....	104,236	.0010
58.....	64,913	.0002	33.....	74,722	.0014
82.....	78,040	.0002	93.....	85,572	.0015
24.....	53,757	.0003	91.....	23,168	.0016
100.....	508,264	.0003	18.....	116,479	.0017
22.....	118,620	.0004	55.....	57,814	.0018
54.....	63,713	.0004	62.....	53,334	.0022

[fol. 165] Sheep

10.....	148,745	$.0001	82.....	852	$.0002
16.....	4,605	.0001	4.....	132,822	.0004
26.....	2,220	.0001	104.....	1,291	.0004
43.....	1,818	.0001	13.....	1,441	.0005
90.....	273,314	.0001	18.....	515,982	.0006
92.....	8,560	.0001	24.....	2,676	.0006
99.....	135,425	.0001	23.....	2,525	.0008
19.....	9,233	.0002	62.....	26,891	.0009
30.....	4,715	.0002	33.....	11,959	.0010
37.....	2,521	.0002	93.....	19,958	.0012

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding expenses are as follows:

$.0075 per head as to cattle and calves
.0004 per head as to hogs
.0002 per head as to sheep

Office Salaries

137. The per head cost on account of office salaries paid in 1932 allocated to each of the species is as follows:

Cattle & Calves

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
84.....	2,066	$.0136	81.....	49,487	$.0846
98.....	519	.0203	65.....	1,342	.0850
47.....	1,271	.0253	40.....	27,389	.0878
111.....	3,433	.0292	6.....	29,701	.0886
104.....	18,357	.0322	34.....	32,711	.0894
3.....	4,198	.0406	76.....	658	.0894
88.....	581	.0420	48.....	59,659	.0896
69.....	20,655	.0426	22.....	19,987	.0903

[fol. 166] Cattle & Calves—Continued

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
86	2,330	.0436	29	14,426	.0933
4	148,819	.0463	19	32,630	.0943
85	13,132	.0474	68	2,694	.0960
41	287	.0525	36	11,002	.1002
38	34,477	.0527	73	25,474	.1014
52	4,224	.0540	58	48,511	.1016
30	47,364	.0546	87	9,396	.1020
54	32,657	.0557	78	18,542	.1037
8	14,096	.0567	32	1,792	.1089
7	177	.0575	94	10,146	.1106
95	3,094	.0580	100	163,862	.1107
72	4,442	.0581	10	59,159	.1111
39	1,449	.0585	101	2,768	.1111
66	141,218	.0628	50	7,683	.1133
33	60,917	.0629	63	36,768	.1149
43	39,217	.0639	46	3,130	.1160
71	66,384	.0644	5	2,007	.1168
61	19,481	.0646	96	27,143	.1193
56	62,105	.0664	60	1,344	.1217
64	6,888	.0671	70	51,037	.1365
75	38,604	.0673	99	51,593	.1367
92	34,140	.0674	55	26,343	.1372
28	13,785	.0689	67	5,524	.1372
20	47,832	.0693	42	14,365	.1406
77	74,220	.0697	12	7,814	.1469
45	87,528	.0721	74	4,862	.1518
17	412	.0736	79	15,231	.1564
59	18,933	.0741	31	1,033	.1580
16	28,931	.0750	26	26,031	.1767
24	48,754	.0752	102	565	.2110
51	158,140	.0758	103	24	.2142
11	63,219	.0760	15	855	.2267
62	21,349	.0760	90	15	.2360
35	4,533	.0768	27	6,286	.2377
22	19,987	.0769	89	495	.2617
23	42,362	.0780	1	1,095	.2708
83	32,162	.0787	14	121	.2962
82	5,988	.0793	91	1,515	.3446
18	149,778	.0802	13	3,608	.3990
97	39,467	.0818	49	10	.4450
21	47,508	.0827	9	3,466	.5109
27	6,286	.0832			
93	23,089	.0839			
44	1,069	.0842			
80	36,342	.0846			

[fol. 167] Hogs

47	13,693	$.0015	87	30,059	$.0278
84	17,200	.0034	102	9,299	.0281
111	2,898	.0091	19	93,622	.0284
39	18,252	.0100	2	51,946	.0288
85	43,221	.0109	4	104,236	.0292
86	10,591	.0110	48	153,661	.0297
98	505	.0111	71	71,538	.0301
72	963	.0125	29	49,458	.0310
69	51,034	.0143	51	86,493	.0312
35	25,879	.0147	32	1,809	.0313
41	905	.0147	77	74,638	.0319
54	63,713	.0162	83	49,372	.0319
7	402	.0165	66	129,004	.0322
34	116,999	.0166	49	7,584	.0329
82	78,040	.0166	14	14,152	.0329

Hogs—Continued

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
76	7,306	.0177	100	508,264	.0336
28	31,688	.0183	75	16,036	.0344
16	51,783	.0194	11	105,011	.0346
104	14,756	.0198	50	14,098	.0347
44	16,616	.0200	67	3,742	.0369
65	8,751	.0205	73	48,534	.0390
52	1,819	.0206	18	116,479	.0393
93	85,572	.0207	58	64,913	.0394
43	47,412	.0210	103	65	.0395
64	14,820	.0211	10	66,307	.0414
23	77,905	.0214	63	80,027	.0417
22	118,620	.0218	59	8,395	.0421
8	10,286	.0226	5	1,491	.0429
61	38,784	.0229	36	4,724	.0435
38	48,126	.0231	46	2,806	.0436
88	1,266	.0232	55	57,814	.0438
45	117,651	.0234	94	7,157	.0449
97	95,077	.0234	70	45,980	.0455
3	7,185	.0247	15	13,784	.0469
68	10,812	.0248	81	44,727	.0475
95	2,167	.0250	96	44,653	.0477
78	55,012	.0251	56	19,909	.0494
20	93,825	.0252	89	253	.0508
27	21,610	.0254	37	65,748	.0513
24	53,757	.0259	74	6,234	.0521
30	24,616	.0262	80	12,884	.0523
62	53,334	.0262	26	40,243	.0545
21	100,545	.0264	1	3,805	.0549
33	74,722	.0267	60	1,499	.0560
99	249,755	.0267	12	8,434	.0581
92	56,246	.0272	91	23,168	.0607
42	74,736	.0273	79	5,118	.0641
40	50,850	.0274	13	11,296	.0866
6	76,895	.0276	101	728	.0945
17	2,699	.0277	9	17,359	.1164

[fol. 168]

Sheep

111	1,956	$.0028	75	2,930	$.0264
84	348	.0048	8	1,252	.0273
57	631,599	.0063	2	4,637	.0275
7	119	.0069	59	1,037	.0275
29	62,402	.0075	30	4,715	.0278
71	142,503	.0077	56	9,554	.0281
69	5,726	.0078	61	2,082	.0286
81	59,563	.0087	40	4,634	.0288
18	515,982	.0091	46	827	.0289
100	397,609	.0096	3	321	.0290
4	132,822	.0101	96	7,676	.0292
10	148,745	.0105	19	9,233	.0293
52	151	.0106	82	852	.0295
99	135,425	.0111	38	6,749	.0302
86	358	.0111	20	6,367	.0305
45	32,843	.0112	12	3,409	.0312
78	16,362	.0116	43	1,818	.0313
83	19,063	.0125	5	468	.0335
36	4,257	.0128	48	12,275	.0337
90	273,314	.0129	73	6,301	.0350
62	26,891	.0129	42	4,065	.0351
6	9,431	.0145	76	209	.0361
104	1,291	.0146	102	252	.0371
16	4,605	.0148	91	1,923	.0374

Sheep—Continued

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
66	105,764	.0152	94	944	.0392
93	19,958	.0155	68	273	.0394
35	1,255	.0155	11	6,931	.0403
33	11,959	.0156	39	145	.0414
22	7,922	.0167	24	2,676	.0425
32	860	.0167	23	2,525	.0443
21	29,199	.0183	27	1,021	.0449
85	1,495	.0187	87	2,295	.0464
103	67,201	.0190	72	45	.0484
97	16,681	.0194	13	1,441	.0501
54	5,073	.0198	70	3,828	.0507
92	8,560	.0201	63	6,249	.0517
80	14,021	.0204	26	2,220	.0561
65	587	.0209	17	90	.0574
51	34,211	.0212	37	2,521	.0620
34	6,444	.0218	50	939	.0714
[fol. 169]					
44	1,323	$.0233	88	51	$.0843
74	89	.0239	1	372	.1038
28	3,493	.0245	15	369	.1199
64	1,109	.0246	49	59	.1376
79	970	.0254	9	1,149	.1410
58	13,161	.0255	14	13	.2331
55	12,827	.0258	60	2	.4950
77	16,490	.0262	89	8	.8575

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office salaries are as follows:

$.0750 per head as to cattle and calves
.0250 per head as to hogs
.0090 per head as to sheep

Office Expenses Other Than Salaries

138. The per head cost on account of office expenses in 1932 allocated to each of the species is as follows:

Cattle and Calves

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
52	4,224	$.0010	63	36,768	$.0436
15	855	.0013	2	15,626	.0451
32	1,792	.0016	96	27,143	.0452
84	2,066	.0030	21	47,508	.0460
98	519	.0038	71	66,384	.0468
60	1,344	.0039	65	1,342	.0486
95	3,094	.0040	22	19,987	.0491
7	177	.0057	23	42,362	.0496
9	3,466	.0062	47	1,271	.0500
67	5,524	.0077	49	10	.0500
27	6,286	.0099	92	34,140	.0521
35	4,533	.0101	58	48,511	.0522

[fol. 170] Cattle and Calves—Continued

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
72	4,442	$.0117	104	18,357	$.0522
82	5,988	.0118	77	74,220	.0539
64	6,888	.0127	39	1,449	.0547
8	14,096	.0139	55	26,343	.0547
76	658	.0139	54	32,657	.0548
36	11,002	.0145	85	13,132	.0549
5	2,007	.0149	68	2,694	.0553
103	24	.0150	34	32,711	.0576
50	7,683	.0154	73	25,474	.0608
59	18,933	.0163	40	27,389	.0632
11	63,219	.0170	6	29,701	.0645
3	4,198	.0178	62	21,349	.0659
86	2,330	.0182	10	59,159	.0662
70	51,037	.0211	43	39,217	.0664
44	1,069	.0212	100	163,862	.0668
28	13,785	.0223	38	34,477	.0674
111	3,433	.0247	99	51,593	.0702
14	121	.0256	97	39,467	.0712
4	148,819	.0276	81	49,487	.0755
48	59,659	.0316	42	14,365	.0760
51	158,140	.0322	93	23,089	.0768
75	38,604	.0331	79	15,231	.0788
19	32,630	.0333	61	19,481	.0800
30	47,364	.0364	83	32,162	.0806
33	60,917	.0368	94	10,146	.0828
24	48,754	.0372	16	28,931	.0851
45	87,528	.0375	1	1,095	.0855
66	141,218	.0377	12	7,814	.0856
56	62,105	.0386	69	20,655	.0879
78	13,542	.0394	37	19,767	.0898
80	36,342	.0399	29	14,426	.0926
20	47,832	.0404	91	1,515	.1444
18	149,778	.0408	13	3,608	.1835
26	26,031	.0432	74	4,862	.2012
			46	3,130	.2687
			17	412	.5501
			89	495	1.7191

[fol. 171] Hogs

15	13,784	$.0003	68	10,812	$.0143
52	1,819	.0004	2	51,946	.0144
32	1,809	.0005	20	93,825	.0147
84	17,200	.0007	21	100,545	.0147
9	17,359	.0014	42	74,736	.0147
7	402	.0016	4	104,236	.0149
95	2,167	.0017	33	74,722	.0156
60	1,499	.0018	63	80,027	.0158
35	25,879	.0019	54	63,713	.0160
67	3,742	.0021	75	16,036	.0169
98	505	.0022	1	3,805	.0173
72	963	.0025	30	24,616	.0175
82	78,040	.0025	55	57,814	.0175
14	14,152	.0028	96	44,653	.0181
76	7,306	.0028	93	85,572	.0190
103	65	.0028	66	129,004	.0193
27	21,610	.0030	37	65,748	.0194
47	13,693	.0030	40	50,850	.0197
49	7,584	.0037	18	116,479	.0200
64	14,820	.0040	6	76,895	.0201
86	10,591	.0046	100	508,264	.0202
50	14,098	.0047	58	64,913	.0203

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Hogs—Continued

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
44	16,616	.0050	97	95,077	.0204
5	1,491	.0055	92	56,246	.0210
8	10,288	.0056	43	47,412	.0218
28	31,688	.0059	71	71,538	.0219
36	4,724	.0063	16	51,783	.0220
70	45,980	.0070	62	53,334	.0227
111	2,898	.0077	73	48,534	.0234
11	105,011	.0078	10	66,307	.0246
39	18,252	.0093	77	74,638	.0246
59	8,395	.0093	80	12,884	.0247
78	55,012	.0095	91	23,168	.0254
19	93,622	.0100	61	38,784	.0284
48	153,661	.0105	56	19,909	.0287
34	116,999	.0107	69	51,034	.0295
3	7,185	.0109	38	48,126	.0296
65	8,751	.0117	29	49,458	.0308
45	117,651	.0122	104	14,756	.0321
85	43,221	.0126	79	5,118	.0323
24	53,757	.0128	83	49,372	.0326
26	40,243	.0133	94	7,157	.0336
51	88,192	.0133	12	8,434	.0339
23	77,905	.0136	13	11,296	.0399
99	249,755	.0137	81	44,727	.0427
22	118,620	.0139	74	6,234	.0691
			46	2,806	.1009
			17	2,699	.2071
			89	253	.3332

[fol. 172]

Sheep

52	151	$.0002	48	12,275	$.0119
32	860	.0003	65	587	.0119
7	119	.0007	3	321	.0127
15	369	.0007	79	970	.0128
84	348	.0010	83	19,063	.0128
103	67,201	.0013	75	2,930	.0130
9	1,149	.0017	58	13,161	.0131
36	4,257	.0019	2	4,637	.0137
35	1,255	.0020	26	2,220	.0137
111	1,956	.0023	34	6,444	.0140
57	631,599	.0035	93	19,958	.0141
5	468	.0043	19	9,233	.0103
78	16,362	.0044	60	2	.0150
82	852	.0044	92	8,560	.0155
18	515,982	.0046	49	59	.0156
64	1,109	.0046	91	1,923	.0156
86	358	.0046	69	5,726	.0161
27	1,021	.0053	56	9,554	.0163
71	142,503	.0056	16	4,605	.0168
76	209	.0057	97	16,681	.0168
99	135,425	.0057	20	6,367	.0178
45	32,843	.0058	12	3,409	.0182
100	397,609	.0058	30	4,715	.0185
44	1,323	.0059	42	4,065	.0190
90	273,314	.0059	54	5,073	.0195
4	132,822	.0060	63	6,249	.0196
59	1,037	.0061	14	13	.0200
10	148,745	.0063	77	16,490	.0202
8	1,252	.0067	40	4,634	.0208
29	62,402	.0075	24	2,676	.0210
70	3,828	.0078	73	6,301	.0210
81	59,563	.0078	85	1,495	.0217

Sheep—Continued

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
28.....	3,493	.0079	68.....	273	.0227
11.....	6,931	.0090	13.....	1,441	.0231
51.....	34,211	.0090	37.....	2,521	.0234
33.....	11,959	.0091	104.....	1,291	.0237
66.....	105,764	.0091	23.....	2,525	.0282
80.....	14,021	.0096	94.....	944	.0293
50.....	939	.0097	74.....	89	.0317
72.....	45	.0100	43.....	1,818	.0326
21.....	29,199	.0102	1.....	372	.0328
55.....	12,827	.0103	61.....	2,082	.0355
6.....	9,431	.0106	38.....	6,749	.0386
22.....	7,922	.0106	39.....	145	.0387
96.....	7,676	.0110	46.....	827	.0670
62.....	26,891	.0112	17.....	90	.4304
			89.....	8	5.6375

[fol. 173] On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office expenses are as follows:

$.0375 per head as to cattle and calves
.0150 per head as to hogs
.0055 per head as to sheep

Business-Getting and Maintaining Expenses

139. The activities of respondents in their efforts to obtain and hold business have hereinbefore been described. The amount which a firm can and will spend is in most cases determined to a large extent by what the existing schedule of rates permits. Respondents contend that the amount which they spend for business getting and maintenance is in each case a matter of business judgment for those who manage the firms and that such amount must be accepted as an item to be covered into rates. The right of respondents to choose the methods to be pursued by them in getting and holding business is herein recognized. Their opinions vary as to the efficacy of the different methods used. Two representatives of livestock producers organizations expressed the opinion that respondents were extravagant in their business-getting expenses. One of these representatives takes the position that respondents should not charge against their patrons amounts expended by them for business-getting and maintenance purposes other than such amount as is sufficient to enable them to keep

their names before the public. It was his opinion that much of the so-called appraisal service is unnecessary and is not required by the shippers. The other of these representatives was of the opinion that the rate payers should not pay through rates anything whatsoever to cover expenses of advertising and business getting.

140. Most of respondent commission firms emphasize the importance of soliciting in the country. This activity requires the time of salesmen and others authorized to solicit and involves the expenses incident to travel and entertainment. Usually those who solicit make their trips at the latter part of the week when business is light and during dull seasons on the market. Respondent commission firms often send their representatives to the country to sort and grade cattle and sheep preparatory to shipment to market. The competition for business is so keen that [fol. 174] many of respondents feel that they are required to perform this appraisal service in the country. This service is usually extended to those who have a sufficient volume of livestock to induce the commission firms to spend the time and incur the expense of a trip to the country, and is usually rendered to those who request it. On such trips an effort is made to contact other producers in the particular locality for the purpose of soliciting their business.

141. Respondents, through personal solicitation, market circulars, and other methods, make some effort to get business away from each other. Some of respondent commission firms contend that their chief business-getting effort is designed to offset direct buying by packers. They make the claim that they are trying to persuade producers to ship to the public market instead of selling to the packers in the country or through packers' concentration yards. Some are of the opinion that they have had a certain degree of success in this effort, but the extent to which such effort is justified is in doubt. Respondent commission firms also contend that they must combat the efforts of other livestock markets to get business. They expend some effort to persuade producers and shippers that they should ship to Chicago instead of some other livestock market. It is

claimed that they must offset unfavorable reports circulated by solicitors who go out from other stockyards and market agencies located thereat.

142. In considering the amount to be allowed as a reasonable unit cost for business getting and maintenance, the purpose and scope of such expenditures must be considered. Respondents are entitled to use such means and methods as will enable them to keep their names before the public. It is recognized that the reputation for rendering good service is one of the most important factors in holding and getting business but respondents do not deem that alone to be sufficient. Personal contact with their customers and prospective customers is regarded as an important element in the maintenance of the business. Respondent members of the Chicago Livestock Exchange have mutually imposed some limitations upon themselves as to the amount of time and the expense devoted to business-getting efforts. Each respondent holds its services out to be of the very highest character. Beyond the payment of a reasonable amount in the form of rates to enable the respondents to keep their names before the public, the shipper should not be required to pay to have himself persuaded to patronize one commission firm rather than an- [fol. 175] other, when each serves him equally well. There is not apparent any reason why the shippers who patronize a central market should be taxed to persuade other shippers that they should not sell their livestock direct to packers. If respondents choose to engage in such a campaign, that is a matter lying entirely within the realm of management, but it is not reasonable to finance such a campaign through rates charged to those who are already shipping to the central livestock markets. The rates under consideration here are for selling and/or buying livestock at the Chicago market, and the determination of the reasonableness of such rates should not be made on the basis of increased receipts which might come to the market if there were no sales made direct to packers in the country or on the basis of the cost of persuading producers that they should ship to the public market. Some of Chicago's livestock trade territory is competitive with other markets and within those competitive areas respondents are warranted in making such efforts to attract business as will keep their

market and their individual firm names favorably before the shippers.

143. It is recognized that the Union Stock Yards and Transit Company of Chicago, Illinois, maintains solicitors who are constantly engaged in persuading shippers to ship to the Union Stock Yards at Chicago. The stockyard company also engages in other activities designed to attract business. In addition the respondent commission firms, through their Exchange, broadcast the market news throughout Chicago's livestock trade territory and this activity is carried on jointly as a sort of advertising venture. The Exchange assesses the cost of this service against the individual firms and as an item of expense it has been included in administrative and general expenses. As hereinbefore described, the dissemination of market news is made in great detail each day by a branch of the Department of Agriculture. Practically all respondent commission firms issue their individual market letters containing information, some of which is a duplication of that which is disseminated by the Government agency and by the Exchange. A further duplication is found in much information which is disseminated through the local livestock market paper for which most of respondent commission firms subscribe for their customers to a greater or less extent.

144. In determining the expenses actually incurred by [fol. 176] each of respondent commission firms for the purposes of getting and maintaining business, all travel expenses have been included. To a certain extent such expenses include travel in connection with the inspection of livestock for loans and the making of such loans. In making allowance for a reasonable unit cost for salesmanship, consideration has been given to the fact that it is the custom of salesmen to spend some of their time in the country. The performance found to be reasonable for salesmanship is based upon the consideration that a reasonable amount of time will be spent in the country making contacts with customers and prospective customers. Respondent commission firms have no regularly employed solicitors; therefore, in ascertaining the unit costs of business getting and maintenance as actually incurred, no allowance has been made for the salaries to cover that part of the time of those who do soliciting. This has been included in

the allowance made for the employment of competent salesmen and in that made for those who perform services other than salesmanship. The non-salary expenses for business getting and maintenance incurred by respondent commission firms amounted to approximately 11 percent of the total commissions received in 1932 less those received from the sale of livestock for traders. The following tables show the unit cost per head of non-salary expenses for each species for business getting and maintenance:

[fol. 177]

Cattle & Calves

Firm No.	No. of Head	Business Getting and Maintaining Expenses	Firm No.	No. of Head	Business Getting and Maintaining Expenses
86	2,330	$.0028	83	32,162	$.0640
103	24	.0033	62	21,349	.0661
47	1,271	.0037	22	19,987	.0673
9	3,466	.0132	24	48,754	.0683
7	177	.0146	54	32,657	.0700
82	5,988	.0163	2	15,625	.0715
94	10,146	.0191	44	1,069	.0718
35	4,533	.0199	51	158,140	.0725
59	18,933	.0226	95	3,094	.0734
64	6,888	.0232	42	14,365	.0736
79	15,231	.0281	99	51,593	.0740
30	47,364	.0282	80	36,342	.0748
28	13,785	.0289	58	48,511	.0756
39	1,449	.0299	37	19,767	.0787
27	6,286	.0307	104	18,357	.0830
77	74,220	.0342	69	20,655	.0837
5	2,007	.0353	111	3,433	.0839
33	60,917	.0356	96	27,143	.0845
21	47,508	.0379	17	412	.0845
56	62,105	.0384	93	23,089	.0879
40	27,389	.0390	85	13,132	.0883
74	4,862	.0403	38	34,477	.0906
19	32,630	.0405	61	19,481	.0909
97	39,647	.0424	26	26,031	.0913
73	25,474	.0454	50	7,683	.0926
34	32,711	.0456	18	149,778	.0932
8	14,096	.0465	10	59,159	.0950
55	26,343	.0482	4	148,819	.0985
29	14,426	.0499	87	9,396	.1026
45	87,528	.0511	81	49,487	.1033
63	36,768	.0512	23	42,362	.1040
20	47,832	.0530	68	2,694	.1079
66	141,218	.0539	65	1,342	.1143
70	51,037	.0551	46	3,130	.1149
11	63,219	.0555	71	66,384	.1158
78	13,542	.0558	100	163,862	.1337
16	28,931	.0567	36	11,002	.1472
92	34,140	.0567	6	29,701	.1492
88	581	.0583	67	5,524	.1526
48	59,659	.0617	91	1,515	.1530
43	39,217	.0620	13	3,608	.1575
75	38,604	.0628	12	7,814	.2093

[fol. 178]

Hogs

Firm No.	No. of Head	Business Getting and Maintaining Expenses	Firm No.	No. of Head	Business Getting and Maintaining Expenses
47	13,693	$.0004	18	116,479	$.0233
103	65	.0006	75	16,036	.0239
86	10,591	.0010	80	12,884	.0239
52	78,040	.0026	83	49,372	.0239
7	402	.0048	30	24,616	.0241
9	17,359	.0054	24	53,757	.0244
35	25,879	.0077	70	45,980	.0244
64	14,820	.0084	2	51,946	.0249
28	31,688	.0086	44	16,616	.0249
94	7,157	.0089	54	63,713	.0251
39	18,252	.0094	104	14,756	.0255
27	21,610	.0094	96	44,653	.0262
5	1,491	.0099	17	2,699	.0267
77	74,638	.0109	93	85,572	.0271
59	8,395	.0114	48	153,661	.0275
21	100,545	.0123	61	38,784	.0285
34	116,999	.0126	51	88,192	.0286
97	95,077	.0129	42	74,736	.0288
33	74,722	.0132	38	48,126	.0293
56	19,909	.0138	111	2,898	.0295
79	5,118	.0141	85	43,221	.0297
19	93,622	.0146	58	64,913	.0300
73	48,534	.0148	69	51,034	.0301
45	117,651	.0155	87	30,059	.0302
92	56,246	.0160	19	66,307	.0303
55	57,814	.0163	23	77,905	.0309
8	10,288	.0166	81	44,727	.0335
40	50,850	.0168	4	104,236	.0338
66	129,004	.0172	65	8,751	.0341
88	1,266	.0173	50	14,098	.0344
20	93,825	.0174	37	65,748	.0359
11	105,011	.0178	68	10,812	.0370
16	51,783	.0188	46	2,806	.0371
43	47,412	.0191	26	40,243	.0385
29	49,458	.0193	67	3,742	.0417
78	55,012	.0195	71	71,538	.0417
22	118,620	.0200	49	7,584	.0434
63	80,027	.0202	6	76,895	.0456
99	249,755	.0208	13	11,296	.0472
62	53,334	.0217	100	508,264	.0498
74	6,234	.0220	91	23,168	.0673
95	2,167	.0228	36	4,724	.0676
			12	8,434	.0677

[fol. 179]

Sheep

Firm No.	No. of Head	Business Getting and Maintaining Expenses	Firm No.	No. of Head	Business Getting and Maintaining Expenses
103	67,201	$1.0001	16	4,605	$.0115
86	358	.0006	10	148,745	.0117
7	119	.0024	11	6,931	.0118
9	1,149	.0042	6	9,431	.0118
35	1,255	.0047	96	7,676	.0120
5	468	.0050	75	2,930	.0126
62	26,891	.0052	43	1,818	.0129
82	852	.0053	81	59,563	.0130
79	970	.0057	2	4,637	.0133

Sheep—Continued

Firm No.	No. of Head	Business Getting and Maintaining Expenses	Firm No.	No. of Head	Business Getting and Maintaining Expenses
94	944	.0058	63	6,249	.0143
56	9,554	.0059	70	3,828	.0145
59	1,037	.0061	88	51	.0145
21	29,199	.0066	4	132,822	.0148
33	11,959	.0067	74	89	.0150
64	1,109	.0068	69	5,726	.0158
77	16,490	.0071	93	19,958	.0158
28	3,493	.0073	58	13,161	.0163
38	6,749	.0074	104	1,291	.0163
87	2,295	.0074	51	34,211	.0165
27	1,021	.0075	71	142,503	.0165
66	105,764	.0075	30	4,715	.0181
45	32,843	.0077	65	587	.0181
55	12,827	.0077	44	1,323	.0186
83	19,063	.0077	100	397,609	.0190
29	62,402	.0079	46	827	.0191
97	16,681	.0079	54	5,073	.0196
34	6,444	.0093	61	2,082	.0196
78	16,362	.0094	24	2,676	.0210
92	8,560	.0094	48	12,275	.0212
20	6,367	.0095	17	90	.0217
73	6,301	.0098	42	4,065	.0227
19	9,233	.0098	13	1,441	.0228
8	1,252	.0100	26	2,220	.0250
39	145	.0104	85	1,495	.0265
111	1,956	.0104	23	2,525	.0272
57	631,599	.0104	50	939	.0273
80	14,021	.0108	68	273	.0281
99	135,425	.0109	37	2,521	.0284
22	7,922	.0110	12	3,409	.0305
40	4,634	.0110	36	4,257	.0316
90	273,314	.0113	91	1,923	.0327
18	515,982	.0115	49	59	.0679

[fol. 180] 145. The non-salary expenditures on account of business getting and maintenance varied from less than one per cent of the gross commissions for one firm to approximately 28 per cent for another firm. One of the largest firms on the market, which draws its livestock from a wide territory, spent 7.35 per cent of its income for business getting and maintenance, not including any portion of the salaries of those members and employees of the firm who spend time in soliciting. In considering this question it is recognized that the Chicago livestock market is regarded as the basic livestock market of the country and is to some extent the market of last resort for that livestock which is not disposed of on other markets. Under these circumstances, considerable livestock is shipped to the Chicago market both from producers and other markets. It requires little or no effort on the part of respondents to attract such business to the Chicago market. In view of the entire

record in this proceeding it is found that a reasonable unit cost for business-getting and maintenance purposes to be covered into rates should not exceed nine per cent of the total reasonable cost hereinafter found.

Administrative and General Expenses

146. The per head cost in 1932 on account of administrative and general expenses, namely, telephone and telegraph, directors' fees, legal and auditing, taxes, meals, clearing house, Exchange assessments and dues, general and miscellaneous, allocated to each of the species, is as follows:

[fol. 181]

Cattle and Calves

Firm No.	No. of Head	Administrative & Gen'l Expense	Firm No.	No. of Head	Administrative & Gen'l Expense
47	1,271	$.0002	34	32,711	$.0152
19	32,630	.0003	78	13,542	.0155
52	4,224	.0003	96	27,143	.0157
9	3,466	.0005	42	14,365	.0161
59	18,933	.0006	11	63,219	.0162
68	2,694	.0006	58	48,511	.0163
84	2,066	.0008	62	21,349	.0163
101	2,748	.0011	43	39,217	.0171
8	14,096	.0013	38	34,477	.0178
50	7,683	.0013	55	26,343	.0178
95	3,094	.0013	71	66,384	.0181
49	10	.0020	54	32,657	.0182
36	11,002	.0026	61	19,481	.0184
82	5,988	.0027	73	25,474	.0185
27	6,286	.0032	24	48,754	.0195
64	6,888	.0033	33	60,917	.0196
87	9,396	.0033	56	62,105	.0196
1	1,095	.0034	26	26,031	.0200
44	1,069	.0037	63	36,768	.0201
76	658	.0057	18	149,778	.0202
67	5,524	.0059	23	42,362	.0208
79	15,231	.0067	80	36,342	.0211
65	1,342	.0071	92	34,140	.0212
103	24	.0075	83	32,162	.0213
86	2,330	.0099	6	29,701	.0219
45	87,528	.0104	40	27,389	.0220
35	4,533	.0107	81	49,487	.0222
70	51,037	.0109	85	13,132	.0259
51	158,140	.0110	74	4,862	.0260
5	2,007	.0118	10	59,159	.0262
29	14,426	.0120	69	20,655	.0270
75	38,604	.0120	46	3,130	.0280
48	59,659	.0124	100	163,862	.0282
97	39,467	.0127	66	141,218	.0300
22	19,987	.0129	12	7,814	.0301
39	1,449	.0129	93	23,089	.0310
104	18,357	.0129	16	28,931	.0317
20	47,832	.0132	77	74,220	.0336
94	10,146	.0134	37	19,767	.0383
28	13,785	.0144	99	51,593	.0523
4	148,819	.0148	91	1,515	.0623
30	47,364	.0148	13	3,608	.0656
2	15,626	.0149	17	412	.0957
21	47,508	.0152	89	495	.2934

[fol. 182]

Hogs

Firm No.	No. of Head	Administrative & Gen'l Expense	Firm No.	No. of Head	Administrative & Gen'l Expense
9	17,359	$.0001	43	47,412	$.0056
19	93,622	.0001	62	53,334	.0056
49	7,584	.0001	23	77,905	.0057
52	1,819	.0001	55	57,814	.0057
68	10,812	.0002	85	43,221	.0059
84	17,200	.0002	75	16,036	.0061
59	8,395	.0003	26	20,243	.0062
50	14,098	.0004	58	64,913	.0062
8	10,288	.0005	96	44,653	.0063
95	2,167	.0005	61	38,784	.0065
82	78,040	.0006	24	53,757	.0067
1	3,805	.0007	6	76,895	.0069
44	16,616	.0009	40	50,850	.0069
87	30,059	.0009	30	24,616	.0071
101	728	.0009	73	48,534	.0072
27	21,610	.0010	63	80,027	.0073
64	14,820	.0010	11	105,011	.0074
36	4,724	.0011	93	85,572	.0076
76	7,306	.0011	38	48,126	.0078
103	65	.0014	4	104,236	.0080
67	3,742	.0016	69	51,034	.0080
65	8,751	.0017	104	14,756	.0080
35	25,879	.0020	16	51,783	.0082
39	18,252	.0022	33	74,722	.0083
86	10,591	.0025	37	65,748	.0083
79	5,118	.0027	71	71,538	.0085
34	116,999	.0028	92	56,246	.0085
42	74,736	.0031	83	49,372	.0086
45	117,651	.0034	100	508,264	.0086
70	45,980	.0036	74	6,234	.0089
97	95,077	.0036	10	66,307	.0097
22	118,620	.0037	18	116,479	.0098
28	31,688	.0038	99	249,755	.0102
78	55,012	.0038	46	2,806	.0105
48	153,661	.0041	91	23,168	.0110
5	1,491	.0043	12	8,434	.0119
51	83,192	.0045	81	44,727	.0125
2	51,946	.0047	80	12,884	.0131
29	49,458	.0047	13	11,296	.0142
21	100,545	.0048	56	57,814	.0146
20	93,825	.0049	77	74,638	.0154
54	63,713	.0053	17	2,699	.0360
94	7,157	.0054	89	253	.0569

[fol. 183]

Sheep

Firm No.	No. of Head	Administrative & Gen'l Expense	Firm No.	No. of Head	Administrative & Gen'l Expense
9	1,149	$.0001	96	7,676	$.0040
19	9,233	.0001	74	89	.0041
59	1,037	.0002	69	5,726	.0043
68	273	.0002	99	135,425	.0043
84	348	.0002	2	4,637	.0045
36	4,257	.0003	48	12,275	.0046
8	1,252	.0006	75	2,930	.0046
103	67,201	.0007	94	944	.0046
29	62,402	.0010	33	11,959	.0049
44	1,323	.0010	28	3,493	.0051
79	970	.0010	80	14,021	.0051

Sheep—Continued

Firm No.	No. of Head	Administrative & Gen'l Expense	Firm No.	No. of Head	Administrative & Gen'l Expense
82	852	.0010	20	6,367	.0055
64	1,109	.0012	93	19,958	.0057
1	372	.0013	104	1,291	.0059
87	2,295	.0014	92	8,560	.0060
45	32,843	.0016	16	4,605	.0063
27	1,021	.0017	73	6,301	.0063
65	587	.0017	12	3,409	.0064
78	16,362	.0017	26	2,220	.0064
71	142,503	.0021	54	5,073	.0064
35	1,255	.0022	91	1,923	.0067
81	59,563	.0022	46	827	.0069
76	209	.0023	40	4,634	.0072
18	515,982	.0024	66	105,764	.0072
100	397,609	.0024	30	4,715	.0075
10	148,745	.0025	57	631,599	.0078
86	358	.0025	61	2,082	.0081
62	26,891	.0027	13	1,441	.0082
22	7,922	.0028	50	939	.0082
51	34,211	.0030	56	9,554	.0083
97	16,681	.0030	43	1,818	.0084
4	132,822	.0032	11	6,931	.0086
55	12,827	.0033	63	6,249	.0090
83	19,063	.0033	39	145	.0091
5	468	.0034	37	2,521	.0100
6	9,431	.0034	38	6,749	.0102
21	29,199	.0034	85	1,495	.0102
34	6,444	.0037	24	2,676	.0110
58	13,161	.0037	23	2,525	.0118
90	273,314	.0038	77	16,490	.0126
42	4,065	.0040	17	96	.0749
70	3,828	.0040	89	8	.9625

[fol. 184] On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of administrative and general expenses are as follows:

$.0150 per head as to cattle and calves
.0055 per head as to hogs
.0030 per head as to sheep

Insurance

147. The risks incurred by respondents in the conduct of the commission business have been discussed hereinbefore. Some of these risks are insurable; other- are not. Those expenses for which premiums are paid to carry the insurable risks are costs properly coverable into a reasonable schedule of commission rates. Government accountant's cost study provided a sufficient amount to cover the

premium on all insurable items even though in many instances respondents were carrying the risk themselves. The allowance hereinafter made covers insurance against loss by fire of furniture and fixtures, workmen's compensation, losses on account of selling stolen and mortgaged livestock, the expenses incurred in payment of bond premium, and the expenditures actually incurred by respondents for bank and forgery insurance. The last two items are included in the amount actually paid. The allowance to cover the furniture and fixture insurance, workmen's compensation, and loss on account of selling stolen and mortgaged livestock was adjusted by the Government accountant on the basis of rates submitted by a national insurance company. This adjustment resulted in an increase of approximately $17,000 over the expenses actually incurred on account of these items. The total allowance so determined has been allocated to species on the basis of head times value. The following tables set forth by firms the per head costs covering insurable risks calculated on the basis stated above:

[fol. 185] Cattle & Calves

Firm No.	No. of Head	Insurance	Firm No.	No. of Head	Insurance
72	4,442	$.0011	11	63,219	$.0083
31	1,033	.0014	18	149,778	.0084
103	24	.0020	98	519	.0084
82	5,988	.0026	42	14,365	.0085
49	10	.0040	43	39,217	.0085
79	15,231	.0044	70	51,037	.0086
39	1,449	.0045	80	36,342	.0089
14	121	.0046	51	158,140	.0091
36	11,002	.0046	30	47,364	.0094
50	7,683	.0047	4	148,819	.0095
1	1,095	.0047	78	13,542	.0095
64	6,888	.0049	24	48,754	.0097
8	14,096	.0049	56	62,105	.0098
44	1,069	.0049	40	27,389	.0099
55	26,343	.0052	81	49,487	.0099
76	658	.0052	6	29,701	.0101
86	2,330	.0053	97	39,467	.0101
67	5,524	.0053	85	13,132	.0103
52	4,224	.0053	21	47,508	.0104
101	2,768	.0054	104	18,357	.0104
37	19,767	.0054	63	36,768	.0106
27	6,286	.0055	10	59,159	.0107
26	26,031	.0057	94	10,146	.0108
32	1,792	.0057	45	87,528	.0109
9	3,466	.0058	20	47,832	.0113
59	18,933	.0060	49	10	.0113
84	2,066	.0061	60	20,655	.0119
48	59,659	.0062	90	15	.0120
5	2,007	.0062	83	32,162	.0122
111	3,433	.0063	54	32,657	.0123

Cattle and Calves—Continued

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
75	38,604	.0064	92	34,140	.0125
65	1,342	.0066	23	42,362	.0126
15	855	.0066	2	15,626	.0128
95	3,094	.0066	58	48,511	.0129
102	565	.0066	71	66,384	.0131
60	1,344	.0070	73	25,474	.0131
3	4,198	.0070	29	14,426	.0133
34	32,711	.0072	55	26,343	.0135
68	2,694	.0073	13	3,608	.0145
88	581	.0073	77	74,220	.0147
28	13,785	.0073	100	163,862	.0149
96	27,143	.0073	16	28,931	.0162
7	177	.0074	38	34,477	.0172
12	7,814	.0074	99	51,593	.0175
87	9,396	.0075	61	19,481	.0178
41	287	.0078	62	21,349	.0196
19	32,630	.0079	91	1,515	.0219
66	141,218	.0080	46	3,130	.0268
33	60,917	.0080	74	4,862	.0355
93	23,089	.0082	17	412	.2326
22	19,987	.0082	89	495	.4447

[fol. 186]

Hogs

Firm No.	No. of Head	Insurance	Firm No.	No. of Head	Insurance
72	963	$.0003	18	116,479	$.0025
103	65	.0006	42	74,736	.0025
82	78,040	.0008	43	47,412	.0025
49	7,584	.0011	98	505	.0025
14	14,152	.0013	70	45,980	.0026
39	18,252	.0013	80	12,884	.0027
79	5,118	.0013	51	86,493	.0027
1	3,805	.0014	4	104,236	.0028
8	10,288	.0114	30	24,616	.0028
36	4,724	.0014	24	53,757	.0029
44	16,616	.0014	40	50,850	.0029
50	14,098	.0014	56	19,909	.0029
35	25,879	.0015	78	55,012	.0029
64	14,820	.0015	6	76,895	.0030
76	73,076	.0015	81	44,727	.0030
27	21,610	.0016	97	95,077	.0030
37	65,748	.0016	85	43,221	.0031
52	1,819	.0016	21	100,545	.0021
67	3,742	.0016	104	14,756	.0031
86	10,591	.0016	63	80,027	.0032
101	726	.0016	94	7,157	.0032
9	17,359	.0017	10	66,307	.0032
26	40,243	.0017	45	117,651	.0032
32	1,809	.0017	20	93,825	.0034
5	1,491	.0018	47	13,693	.0034
48	153,661	.0018	69	51,034	.0036
59	8,395	.0018	83	49,372	.0036
84	17,200	.0018	54	63,713	.0037
15	13,784	.0019	23	77,905	.0037
75	16,036	.0019	92	56,246	.0038
95	2,167	.0019	2	51,946	.0038
111	2,898	.0019	58	64,913	.0039
65	8,751	.0020	71	71,538	.0039
102	9,299	.0020	73	48,534	.0039

Hogs—Continued

Firm No.	No. of Head	Insurance	Firm No.	No. of Head	Insurance
60	1,499	.0021	29	49,458	.0039
3	7,185	.0021	55	57,814	.0041
28	31,688	.0021	13	11,296	.0043
34	116,999	.0021	77	74,638	.0044
68	10,812	.0022	100	508,264	.0044
88	1,266	.0022	16	51,783	.0048
7	402	.0022	38	48,126	.0051
12	8,434	.0022	99	249,755	.0052
96	44,653	.0022	61	38,784	.0053
87	30,059	.0023	62	53,334	.0059
19	93,622	.0023	91	23,168	.0066
41	905	.0023	46	2,806	.0080
66	129,004	.0024	74	6,234	.0106
11	105,011	.0024	17	2,699	.0698
22	118,620	.0024	89	253	.1335
33	74,722	.0024			
93	85,572	.0025			

[fol. 187]

Sheep

Firm No.	No. of Head	Insurance	Firm No.	No. of Head	Insurance
72	45	$.0002	51	34,211	$.0013
103	67,201	.0002	80	14,021	.0013
82	852	.0003	4	132,822	.0014
49	59	.0005	24	2,676	.0014
39	145	.0006	30	4,715	.0014
79	970	.0006	40	4,634	.0014
1	372	.0007	56	9,554	.0014
8	1,252	.0007	78	16,362	.0014
14	13	.0007	81	59,563	.0014
35	1,255	.0007	6	9,431	.0015
36	4,257	.0007	21	29,199	.0015
44	1,323	.0007	63	6,249	.0015
50	939	.0007	85	1,495	.0015
52	151	.0007	97	16,681	.0015
64	1,109	.0007	104	1,291	.0015
76	209	.0007	10	148,745	.0016
86	358	.0007	20	6,367	.0016
9	1,149	.0008	45	32,843	.0116
26	2,220	.0008	90	273,314	.0016
27	1,021	.0008	94	944	.0016
32	860	.0008	69	5,726	.0017
37	2,521	.0008	23	2,525	.0018
5	468	.0009	54	5,073	.0018
48	12,275	.0009	83	19,063	.0018
59	1,037	.0009	92	8,560	.0018
75	2,930	.0009	2	4,637	.0019
84	348	.0009	29	62,402	.0019
102	252	.0009	58	13,161	.0019
111	1,956	.0009	71	142,503	.0019
3	321	.0010	55	12,827	.0020
7	119	.0010	13	1,441	.0021
15	369	.0010	77	16,490	.0022
28	3,493	.0010	100	397,609	.0022
34	6,444	.0010	16	4,605	.0024
65	587	.0010	38	6,749	.0025
68	273	.0010	61	2,082	.0026
12	3,409	.0011	99	135,425	.0026
19	9,233	.0011	62	26,891	.0029
87	2,295	.0011	91	1,923	.0032

Sheep—Continued

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
88.....	51	.0011	46.....	827	.0040
96.....	7,676	.0011	74.....	89	.0053
11.....	6,931	.0012	73.....	6,301	.0322
18.....	515,982	.0012	17.....	90	.0351
22.....	7,922	.0012	89.....	8	.0662
33.....	11,959	.0012			
42.....	4,065	.0012			
43.....	1,818	.0012			
66.....	105,764	.0012			
70.....	3,828	.0012			
93.....	19,958	.0012			

[fol. 188] On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal allowance to be covered into rates on account of the insurable risks are as follows:

$.0085 per head as to cattle and calves
.0025 per head as to hogs
.0015 per head as to sheep

Interest on Capital

148. The livestock commission business is largely a personal service which needs a relatively small amount of capital. Some capital, however, is necessary and a reasonable return on this is a proper item of cost to be covered into reasonable rates. Both the accountant for the Government and the accountant for the respondents set up capital requirements for the same items, namely:

(1) Sound value of furniture and fixtures, horses, yard supplies and automobiles.
(2) Membership in the Live Stock Exchange.
(3) Working capital to finance operations.
(4) Material and supplies inventory.

The only difference between the accountants was in valuing the Exchange memberships. The account for the Government used present value and the account for the respondents used the average sale value for 5 years.

149. The accountant for the Government used a rate of 7 per cent on the composite amount of these items. The accountant for the respondents used a rate of 8 per cent. Testimony of various witnesses was to the effect that the prevailing rate of interest on cattle paper was 6 per cent, although in the immediate past it had been 7 per cent. An economist called by the Government testified that, in his

opinion, a return of 6 per cent on the fixed capital and 7 per cent on the working capital would be fair and reasonable.

150. The activities of the Chicago Livestock Exchange and the Chicago Traders Livestock Exchange have already been described. The evidence shows that livestock shippers receive no services from the Traders Exchange and that they pay for those rendered by the Livestock Exchange through special charges assessed by it. It is found that memberships in the exchanges are not a part of respondents' capital necessary in rendering the services for [fol. 189] which rates are herein being determined, and that no allowance on account of interest on their value should be included in the costs coverable into rates.

151. The audits of the books of the various respondents show that in some cases the cash and bank balances are in excess of the requirements in the commission business. The excess cash is used in some instances for making loans to producers and feeders of livestock. In other instances, loans occur as assets on the balance sheets of the respondents. The loan business, although conducted in conjunction with the commission business, is not a part of the service of selling and buying livestock on a commission basis. The income derived from it is dependent upon the interest rate charged, and this is a matter of contract between the lender and the borrower. Inasmuch as the funds used in connection with the loan business produce an income in the form of interest collected from the borrower, it is found that the amount of the loans should not be included in the capital deemed necessary in the conduct of the commission business.

152. Securities, real estate, and the like are included among the assets shown on the books of some of the respondents, who contend that these investments are necessary in establishing a satisfactory financial showing in order to obtain bonds required under the provisions of the Packers and Stockyards Act. Even though such assets are a material factor in obtaining the necessary bonds, they have potential income-producing capacity and are not a part of the capital used in the commission business as such. The income and expenses incident to the ownership of such assets are separate from the income realized and expenses incurred by respondents in the rendition of serv-

ices, for which rates are here being determined. It is found that the interest on the investment in these assets should not be included as a part of the cost to be covered into rates.

153. In arriving at a reasonable and normal allowance for capital, consideration has been given to both fixed and working capital. Interest at 6 per cent on fixed capital, except the value of memberships, as agreed upon by accountants, and at 7 per cent on working capital, as agreed upon by them, has been computed for each of the respondent commission firms. The total interest so computed for each firm on fixed and working capital has been allocated to species on the basis of head times value. The sum of the interest expressed in cents per head has been set up as to each firm in the following table:

[fol. 190] Cattle and Calves

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
47	1,271	$.0030	8	14,096	$.0080
49	10	.0030	13	3,608	.0080
72	4,442	.0030	20	47,832	.0080
82	5,988	.0030	21	47,508	.0080
103	24	.0030	26	26,031	.0080
28	13,785	.0040	33	60,917	.0080
59	18,933	.0040	34	32,711	.0080
64	6,888	.0040	43	39,217	.0080
18	149,778	.0050	54	32,657	.0080
27	6,286	.0050	61	19,481	.0080
35	4,533	.0050	62	21,349	.0080
44	1,069	.0050	71	66,384	.0080
48	59,659	.0050	77	74,220	.0080
52	4,224	.0050	85	13,132	.0080
65	1,342	.0050	99	51,593	.0080
67	5,524	.0050	100	163,862	.0080
78	13,542	.0050	29	14,426	.0090
84	2,066	.0050	37	19,767	.0090
86	2,330	.0050	40	27,389	.0090
87	9,396	.0050	55	26,343	.0090
90	15	.0050	58	48,511	.0090
101	2,768	.0050	69	20,655	.0090
111	3,433	.0050	73	25,474	.0090
4	148,819	.0060	93	23,089	.0090
11	63,219	.0060	1	1,095	.0100
14	121	.0060	9	3,466	.0100
15	855	.0060	10	59,159	.0100
24	48,754	.0060	16	28,931	.0100
30	47,364	.0060	36	11,002	.0100
32	1,792	.0060	38	34,477	.0100
39	1,449	.0060	60	1,344	.0100
45	87,528	.0060	75	38,604	.0100
51	158,140	.0060	83	32,162	.0100
63	36,768	.0060	89	495	.0100
70	51,037	.0060	6	29,701	.0110
76	658	.0060	50	7,683	.0110
79	15,231	.0060	80	36,342	.0110
102	565	.0060	41	287	.0120

Cattle and Calves—Continued

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
2.....	15,626	.0070	81.....	49,487	.0120
5.....	2,007	.0070	95.....	3,094	.0120
19.....	32,630	.0070	98.....	519	.0120
22.....	19,987	.0070	94.....	10,146	.0130
23.....	42,362	.0070	104.....	18,357	.0130
31.....	1,033	.0070	12.....	7,814	.0140
42.....	14,365	.0070	46.....	3,130	.0170
56.....	62,105	.0070	3.....	4,198	.0180
66.....	141,218	.0070	68.....	2,694	.0190
88.....	581	.0070	91.....	1,515	.0200
92.....	34,140	.0070	7.....	177	.0220
96.....	27,143	.0070	74.....	4,862	.0230
97.....	39,467	.0070	17.....	412	.0610

[fol. 191]

Hogs

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
47.....	13,693	$.0008	77.....	74,638	$.0023
72.....	963	.0008	85.....	43,221	.0023
49.....	7,584	.0009	99.....	249,755	.0023
82.....	78,040	.0009	100.....	508,264	.0023
28.....	31,688	.0011	13.....	11,296	.0023
103.....	65	.0011	21.....	100,545	.0023
59.....	8,395	.0013	34.....	116,999	.0023
64.....	14,820	.0013	43.....	47,412	.0023
87.....	30,059	.0013	71.....	71,538	.0024
52.....	1,819	.0014	8.....	10,288	.0024
78.....	55,012	.0014	20.....	93,825	.0024
101.....	726	.0014	61.....	38,784	.0025
111.....	2,898	.0014	62.....	53,334	.0025
44.....	16,616	.0014	26.....	40,243	.0025
48.....	153,661	.0015	33.....	74,722	.0025
84.....	17,200	.0015	55.....	57,814	.0026
86.....	10,591	.0015	69.....	51,034	.0026
18.....	116,479	.0015	73.....	48,534	.0026
27.....	21,610	.0015	58.....	64,913	.0028
35.....	25,879	.0015	60.....	1,499	.0028
65.....	8,751	.0016	93.....	85,572	.0028
67.....	3,742	.0016	37.....	65,748	.0028
45.....	117,651	.0016	40.....	50,850	.0028
70.....	45,980	.0017	10.....	66,307	.0029
76.....	7,306	.0017	29.....	49,458	.0029
15.....	13,784	.0017	75.....	16,036	.0030
39.....	18,252	.0017	83.....	49,372	.0030
79.....	5,118	.0018	1.....	3,805	.0030
4.....	104,236	.0018	16.....	51,783	.0030
11.....	105,011	.0018	36.....	4,724	.0030
51.....	86,493	.0019	38.....	48,126	.0030
63.....	80,027	.0019	6.....	76,895	.0031
66.....	129,004	.0019	9.....	17,359	.0031
102.....	9,299	.0019	50.....	14,098	.0032
14.....	14,152	.0019	80.....	12,884	.0032
30.....	24,616	.0019	98.....	505	.0036
32.....	1,809	.0019	81.....	44,727	.0037
97.....	95,077	.0020	95.....	2,167	.0037
2.....	51,946	.0020	94.....	7,157	.0038
23.....	77,905	.0020	41.....	905	.0038
24.....	53,757	.0020	104.....	14,756	.0039
92.....	56,246	.0021	12.....	8,434	.0042
96.....	44,653	.0021	46.....	2,806	.0052

Hogs—Continued

Firm No.	No. of head	Yarding Expenses	Firm No.	No. of Head	Yarding Expenses
5	1,491	.0021	3	7,185	.0055
19	93,622	.0021	68	10,812	.0056
22	118,620	.0021	91	23,168	.0061
56	19,909	.0022	7	402	.0066
88	1,266	.0022	74	6,234	.0069
42	74,736	.0022	17	2,699	.0185
54	63,713	.0023	89	253	.0298

[fol. 192]

Sheep

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
72	45	$.0004	56	9,554	$.0011
49	59	.0005	77	16,490	.0011
82	852	.0005	85	1,495	.0011
103	67,201	.0005	92	8,560	.0011
28	3,493	.0006	99	135,425	.0011
27	1,021	.0007	100	397,609	.0011
35	1,255	.0007	13	1,441	.0012
44	1,323	.0007	20	6,367	.0012
48	12,275	.0007	26	2,220	.0012
52	151	.0007	34	6,444	.0012
59	1,037	.0007	43	1,818	.0012
64	1,109	.0007	54	5,073	.0012
78	16,362	.0007	61	2,082	.0012
87	2,295	.0007	62	26,891	.0012
90	273,314	.0007	71	142,503	.0012
111	1,956	.0007	14	13	.0013
15	369	.0008	33	11,959	.0013
18	515,982	.0008	55	12,827	.0013
45	32,843	.0008	69	5,726	.0013
65	587	.0008	73	6,301	.0013
84	348	.0008	29	62,402	.0014
86	358	.0008	37	2,521	.0014
2	4,637	.0009	40	4,634	.0014
4	132,822	.0009	58	13,161	.0014
11	6,931	.0009	93	19,958	.0014
23	2,525	.0009	1	372	.0015
24	2,676	.0009	6	9,431	.0015
30	4,715	.0009	9	1,149	.0015
32	860	.0009	10	148,745	.0015
39	145	.0009	16	4,605	.0015
70	3,828	.0009	36	4,257	.0015
76	209	.0009	38	6,749	.0015
79	970	.0009	75	2,930	.0015
102	252	.0009	83	19,063	.0015
5	468	.0010	50	939	.0016
22	7,922	.0010	80	14,021	.0016
51	34,211	.0010	81	59,563	.0018
63	6,248	.0010	94	944	.0019
66	105,764	.0010	104	1,291	.0019
88	51	.0010	12	3,409	.0021
96	7,676	.0010	46	827	.0026
97	16,681	.0010	3	321	.0027
8	1,252	.0011	68	273	.0028
19	9,233	.0011	91	1,923	.0030
21	29,199	.0011	7	119	.0032
42	4,065	.0011	74	89	.0035
			17	90	.0090
			89	8	.0150

[fol. 193] It is found that the following are reasonable allowances per head on account of interest:

$.0080 per head as to cattle and calves
.0025 per head as to hogs
.0010 per head as to sheep

Profits

154. In addition to producing reasonable per-head costs incident to the handling of the different species of livestock, reasonable rates should provide also a profit, that is, compensation for management and the carrying of uninsurable risks. Respondents claim that allowances for the items of management and uninsurable risks are operating costs and that, in addition to them, some allowances should be made for "pure profits" as an inducement to the more efficient firms to continue in business.

155. Capital losses possible in the commission business are small due to its personal service character. The custom of the market is such that respondents at times extend limited amounts of credit to their customers. These extensions may result in loss on account of bad debts. The accounting processes in the office work are such that undercharges may occur in items carried into account sales. These losses are usually so small that the recouping of them from the particular patron to whose benefit they operate is not practicable. These losses vary from year to year and are suffered in different amounts by the various respondents in different years. The experience, therefore, of a hundred respondents in any year forms a reasonably accurate basis for measuring these losses. During 1932 the respondents altogether suffered a loss of approximately $13,000 on account of bad debts incurred in the commission business, errors, refunds, losses on account of refused purchases, estrays, and minor adjustments on account of freight, feed, and yardage. Based upon the foregoing and the information contained in the record, it is found that the reasonable per-head amount on account of uninsurable risks to be covered into a reasonable schedule of rates is as follows:

Cattle and Calves	$.0040
Hogs	.0015
Sheep	.0005

[fol. 194] 156. In the commission business it is necessary to select and coordinate competent personnel so that an efficient organization can be maintained. There are administrative and financial policies which must be determined from time to time. The responsibility for the performance of these duties and for the general supervision of the business is the function of management. Most of the respondent firms are managed by their resident owners. There are a few instances in which the owners devote their entire time to management. In most cases, however, the owners who manage perform other major functions such as the buying and selling of live stock. Three of the respondent firms employ managers. Frequently, both owner and employed managers devote a part of their time to activities such as making livestock loans and business getting and maintenance. Two of the respondent firms which employ managers are cooperative market agencies. The per car cost for management in the case of one of them was $.74 in 1931 and $.93 in 1932. For the other it was $.57 in 1931 and $.60 in 1932. These two cooperative agencies have a board of directors composed chiefly of a number of resident producers. They hold meetings periodically and consult with their resident managers. The other market agency which has an employed resident manager, is one of a number of branch houses, the home office of which is located in the downtown district of Chicago. The owners make trips from time to time to visit the branches located at the various markets including the one at the Chicago stockyards. The responsibility for the direction of the local affairs of the Chicago branch is reposed in the employed manager, whose salary has been classified as an office salary in the determination of unit costs for that item. The owners devote much of their attention to the livestock loan business which is conducted on a rather extensive scale. The owner of one of the respondent firms on the market stated that not over 20 per cent of the total income realized by him in 1932 should be taken for his managerial duties. He withdrew $28,222 from the business in that year. His firm handled approximately 6700 cars and carlot equivalents in that year. On that basis he received approxiately 85c per car for his managerial services. Based upon the foregoing and all the information contained in the record, it is found that the following are reasonable per head allowances for management to be covered into rates:

Cattle and calves	$.0350
Hogs	.0125
Sheep	.0050

[fol. 195] 157. It is desirable that the livestock of producers who patronize the Chicago market be handled by competent commission firms. A schedule of rates based upon the reasonable expenses and reasonable profits herein found would be adequate to accomplish this. The rates hereinafter prescribed include a substantial margin above reasonable costs and a reasonable profit. This margin is in the form of a spread between the reasonable unit costs and reasonable unit profits, and the revenues which would be produced by an application of the rates prescribed.

Summary of Reasonable Selling Costs Plus Reasonable Profits

158. A summary of the foregoing findings as to reasonable per head costs and reasonable profits for selling each species of livestock arriving at the Chicago market is as follows:

	Cattle and Calves	Hogs	Sheep
Salesmanship	$.1667	$.0414	$.0148
Yarding Salaries	.0725	.0280	.0085
Yarding Expenses	.0075	.0004	.0002
Office Salaries	.0750	.0250	.0090
Office Expenses	.0375	.0150	.0055
Business Getting and Maintaining	.0390	.0120	.0050
Administrative and General Expenses	.0150	.0055	.0030
Insurance	.0085	.0025	.0015
Interest	.0080	.0025	.0010
Total cost	.4297	.1323	.0485
Profit:			
To cover management	.0350	.0125	.0050
To cover uninsurable risks	.0040	.0015	.0005
Total reasonable cost and reasonable profit	.4687	.1463	.0540

The foregoing costs have been determined as of the year 1932. During that year there were increases in certain of the operating expenses of the respondents, such as a tax on checks, telegrams, and telephone messages and postage rates. In other expenses, such as salaries, there were decreases in some instances. There were further decreases made after 1932.

[fol. 196] Buying Costs

159. The buying operations of the respondent commission firms constitute a relatively small part of their business, as shown in paragraph 75 herein. For the reason that their volume of purchases on order is so small, these firms do not ordinarily maintain separate organizations or separate individuals to perform the buying service. It is performed for them by their regular yard and office force. Some or all of the salesmen of each firm may do the buying whenever such service is necessary. The regular yard and office force handles the details necessary for the shipment, billing, and accounting. The circumstances of operation are such that the expenses incurred by the respondent commission firms in their buying and selling of livestock are, to a large extent, incurred jointly. The relative amounts expended in performing a specific function may be more or less for selling than for buying. These conditions vary with different transactions. Generally the receiving, driving, and preparation of livestock for sale require work of a character not necessary to the operations of a buyer. However, the buyer may find it necessary to traverse the entire stockyard in search of livestock suitable for his order, and after such effort he may not be able to locate the class of livestock desired. He may be able to fill his order only by purchasing a few here and there about the stockyard. In the latter circumstance there may be considerable yard work involved in assembling the livestock and sorting it according to the orders. If it becomes necessary to hold livestock bought on order until a sufficient number can be obtained for filling the order, much time and responsibility may be involved in looking after the livestock so held. There is also a wide variation in the accounting work entailed in making different purchases. If an order can be filled by a single purchase the accounting work is relatively simple. However, it happens on some occasions that a number of

individual purchases are required to fill a given order, and under such circumstances the accounting work is materially increased.

160. As already pointed out, the selling of livestock on a commission basis requires a relatively small amount of capital; whereas, the buying operation requires a greater amount of capital. The expenditures for getting and maintaining business are greater in connection with the selling operations; whereas, the expenses for telephone and tele- [fol. 197] graph communications incident to the obtaining and execution of orders are generally much greater than similar expenses incurred in connection with selling livestock. The respondent commission firms perform these operations with the same organization and do not set up any segregations of expenses incurred as between selling and buying. In tables heretofore set up in connection with the unit costs of selling, the total volume of selling and buying has been considered in conjunction with the expenses of operation incurred in selling and buying.

161. The respondent order buyers are engaged only in purchasing livestock on order, except to the extent that some of them may buy and sell livestock on their own account on a speculative basis. A study of the operations of these order buyers and the respondent commission firms leads to the conclusion that the unit costs for buying livestock would not exceed those for selling it. It is found that the rates for buying livestock should not exceed those hereinafter prescribed for selling it.

Cost of Handling "Seconds"

162. In this proceeding much testimony was developed relative to the work involved in selling "seconds", that is, livestock bought by traders on the stockyard and placed with commission firms for sale. Traders sell much of their livestock themselves but from time to time they utilize the services of commission firms in making the sales. The volume of such business actually sold for traders by commission firms in 1932 was approximately 10 per cent of the sales volume of cattle and calves, 5 per cent in the case of hogs, and 2½ per cent in the case of sheep. The evidence in some respects is conflicting in regard to the difficulty in handling "seconds" as compared with the difficulty

in handling of shippers' livestock. Some commission firms regard the business of selling "seconds" as a "pick-up" business which entails no extra expenses. Others do not regard it as a desirable kind of business. Much emphasis in this record has been placed upon the accounting work involved, it being contended that the accounting to shippers involves much more work than the accounting to traders for the sale of "seconds." To the extent that they exist, these points of differences involve minor details in office procedure. Some of the differences in this respect will be removed by the type of tariff hereinafter prescribed inasmuch as its application can be made with the same facility [fol. 198] to consignments from the country as to "seconds." After careful weighing of all the testimony bearing upon the cost-occasioning factors in the handling of "seconds" as compared with livestock belonging to shippers and producers, it is found that the reasonable costs hereinbefore found are representative of the costs incurred in handling livestock belonging to traders.

XXIII—Tariff Structure

163. The tariffs now observed by the respondents are constructed upon the carlot as the unit of service with variations due to the differences in the number of head in the consignment. The evidence in this record indicates that the structure of the existing tariff is obsolete. Conditions under which livestock is marketed have changed materially since the time when the carlot was adopted as the basis for assessing rates and charges. There was a time when livestock was handled almost entirely in carlots or in consignments containing a number of carlots. There was little or no sorting for ownership, grades, and classes. At the present time there is in reality no standard size of unit in which livestock is sold. Each shipment is distinct and does not conform to any definite standard, either as to ownership, method of arrival, number of head, grade, or class. Shipments by truck and the growth of plural-ownership consignments have been the chief factors in changing the business from a carlot to nonstandard units. An additional reason for the change is the change in conditions under which livestock is produced and marketed. It is also true that there has been a growth in the tendency among packers to be more exacting in sort-

ing and grading, and this tendency has accentuated the growth in the variations in the size of the units in which livestock is sold.

164. One of the primary considerations in the formulation of a tariff structure is the element of simplicity. From the standpoint of the commission firm it is desirable that a tariff be easy to apply. Ease of application of a tariff facilitates the office work and renders errors less frequent. The shipper should be able to determine from the tariff, at least approximately, what the commission charges will be on a consignment of livestock, and he should be able to determine from the tariff whether the charges have been properly assessed. Simplicity in tariff structure, therefore, is advantageous to the commission firms and to the shippers.

[fol. 199] 165. The existing tariff contains certain maximum and minimum provisions which have the effect of giving weight to the number of head in a consignment within certain limits. The evidence in this record does not indicate any logical basis for such arbitrary distinctions or limitations. Such provisions result in bringing about frequent and unnecessary inequities. In view of the wide variation in the lots of livestock handled, it is not possible to formulate a tariff structure which will do exact justice in every instance and at the same time afford the desired simplicity. The task here is to determine upon a tariff structure which will do as nearly exact justice as possible and at the same time preserve the greatest possible degree of simplicity. The record shows, for approximately 27% of all cattle and calves and 50% of all hogs sold by the respondent commission men, the total number of head, the average weight of the animals, and the prices at which sales were made according to weight classification. This information is based upon representative sales as reported by the local market paper throughout the year 1932. This analysis and all other pertinent information have been given consideration in a determination of the rate structure of the schedule hereinafter prescribed. From all the evidence in this record, it is found that a tariff constructed upon the consignment as the unit, modified by appropriate graduations in charges according to the number of head and according to the weight of the animals in a consign-

ment, will most nearly conform to the desired standards of equity and simplicity.

166. During the oral argument in this proceeding, respondents submitted a tariff prepared by them and proposed for consideration as a tariff of reasonable rates to be herein prescribed. This proposed tariff is based upon the weight draft as the unit with graduations in charges according to the number of head and the weight of the livestock in each weight draft. There are features of their proposed tariff which would tend to overcome some of the obsolete aspects of the existing tariff. The extensive weight classifications would tend to complexity in application. Fewer weight classifications can be made, which will render a tariff simple in its application and at the same time preserve substantial equity among the different weight groups. From all the evidence it is reasonable to conclude that the consignment, as hereinafter defined, more nearly represents the work-occasioning unit than does the weight draft. Additional weight drafts in a consignment occasion some additional work, and the tariff structure [fol. 200] hereinafter prescribed makes provision to compensate for that extra work.

167. That which has been said with respect to the structure of the schedule for selling applies also to the structure for buying.

XXIV—The Reasonableness of Existing Rates

168. Upon the basis of the reasonable costs hereinbefore determined and upon a consideration of the entire record, it is found that respondents' schedules of rates and charges now under investigation contain rates and charges which are unreasonable and unjustly discriminatory.

XXV—Reasonable Rates

169. Upon the basis of all the foregoing and the entire record, it is found that rates not in excess of the following are schedules of just and reasonable rates:

Article I

Definitions

(1) A Consignment, for the purpose of assessing selling charges, is all the livestock of one species delivered in the

name of one person to one market agency to be offered for sale during the trading hours of one day.

(2) A Consignment, for the purpose of assessing buying charges, is all the livestock of one species bought at any time but shipped or delivered to one person on one market day.

(3) A Draft is all those animals in one consignment weighed as a single sales or purchase classification.

(4) A Person is an individual, a partnership, a corporation, and/or an association of any such acting as a unit.

(5) Calves are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 400 pounds or under.

(6) Light Weight Cattle are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 401 pounds to 800 pounds.

[fol. 201] (7) Medium Weight Cattle are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 801 to 1200 pounds.

(8) Heavy Weight Cattle are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 1201 pounds or over.

(9) Pigs are swine, weighed in drafts, the average weight of the animals in which is 130 pounds or under.

(10) Hogs are swine, weighed in drafts, the average weight of the animals in which is 131 pounds or over.

Article II

Selling Charges

Section A, Cattle and Calves

Calves:

Consignments of one head	45¢ per head
Consignments of more than one head	
1 to 15 head inclusive	30¢ per head
16 to 30 head inclusive	25¢ per head
Each head over 30	20¢ per head

Light Weight Cattle:

Consignments of one head	80¢ per head
Consignments of more than one head	
1 to 15 head inclusive	50¢ per head
16 to 30 head inclusive	40¢ per head
Each head over 30	30¢ per head

Medium Weight Cattle:

Consignments of one head	90¢ per head
Consignments of more than one head	
1 to 15 head inclusive	60¢ per head
16 to 30 head inclusive	50¢ per head
Each head over 30	40¢ per head

Heavy Weight Cattle:

Consignments of one head	$1.00 per head
Consignments of more than one head	
1 to 15 head inclusive	75¢ per head
16 to 30 head inclusive	60¢ per head
Each head over 30	50¢ per head

[fol. 202] Section B, Swine

Pigs:

Consignments of one head	30¢ per head
Consignments of more than one head	
1 to 25 head inclusive	15¢ per head
26 to 50 head inclusive	10¢ per head
Each head over 50	5¢ per head

Hogs:

Consignments of one head	35¢ per head
Consignments of more than one head	
1 to 25 head inclusive	25¢ per head
26 to 50 head inclusive	15¢ per head
Each head over 50	5¢ per head

Section C, Sheep or Goats

Sheep or Goats:

Consignments of one head	35¢ per head
Consignments of more than one head	
For the first 10 head in each 300 head	20¢ per head

For the next 50 head in each 300 head	15¢ per head
For the next 60 head in each 300 head	5¢ per head
For the next 130 head in each 300 head	2¢ per head
For the next 50 head in each 300 head	1¢ per head

Article III

Extra Service Charges

The following extra service charges are applicable to each consignment:

For each additional weight draft over 3, on account of sales classification	15¢
For each additional check, each additional account of sales, each proceeds deposit or bank credit over 1	5¢

[fol. 203] Article IV

Buying Charges

The rates for buying livestock of the various species shall not be in excess of those for selling like species.

Order

It is ordered that the respondent market agencies, and each and every one of them, on and after 30 days from the date hereof, cease and desist from demanding or collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges now on file with the Secretary of Agriculture.

It is further ordered that on and after 30 days from the date hereof neither the respondent market agencies nor any of them shall publish, demand, or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge hereinbefore determined to be just, reasonable, and non-discriminatory for the furnishing of such service.

It is further ordered that at least ten days prior to the date upon which this order becomes effective each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a sched-

ule showing all rates and charges for the stockyard services furnished by such respondent at the Union Stock Yards, Chicago, Illinois, and all rules and regulations changing, affecting, or determining such rates or charges, and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just, reasonable, and non-discriminatory for such service.

It is further ordered that a copy of this order be transmitted by registered mail to each and every one of the respondent market agencies.

In witness whereof the Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington this 8th day of January, 1934.

Henry A. Wallace, Secretary of Agriculture.

[fol. 204] EXHIBIT D TO PETITION AND COMPLAINT

Supplemental Order of March 12, 1934

[fol. 205] UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY

Docket No. 402

SECRETARY OF AGRICULTURE

vs.

C. H. ACKER, Doing Business as C. H. Acker and Company, et al., Respondents

Supplemental Order

Whereas, on January 8, 1934, the Secretary issued Findings of Fact and Conclusion in the above entitled case and ordered that respondent market agencies and each of them, on and after thirty days from the date thereof, cease and desist from demanding and collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges then and now filed with the Secretary of Agriculture, and

Whereas, it was further ordered that on and after thirty days from January 8, 1934, neither the respondent market agencies nor any of them shall publish, demand, or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge determined in said order to be just, reasonable, and nondiscriminatory, and

Whereas, it was further ordered that at least ten days prior to the date on which the order of January 8, 1934, was to become effective each and every of the respondent market agencies should publish, give notice of, and file with the Secretary, in accordance with the Packers and Stockyards Act and the regulations of the Secretary thereunder, a schedule showing all rates and charges for the stockyard services furnished by such respondents at the Union Stock Yards, Chicago, Ill., and all rules and regulations changing, affecting, or determining such rates or charges, and that no rate or charge so shown for any stockyard service be in [fol. 206] excess of the rate or charge thereinbefore determined to be just, reasonable, and nondiscriminatory for such service, and

Whereas, the Secretary, by his orders of January 23, February 27 and March 10, 1934, has postponed the effective date of said order whereby it is now to become effective on April 4, 1934, and

Whereas, on February 7, 1934, respondent commission firms filed a petition for rehearing, alleging, in substance, that the schedule of rates and charges prescribed in the Secretary's order will cause certain reductions in revenues which will make it impossible for petitioners to pay necessary operating expenses, thereby curtailing the efficiency of the service rendered; that there have been certain increases in expenses resulting from the operation of the National Recovery Act and the Agricultural Adjustment Act; that the schedule of rates and charges is inequitable in that the rates prescribed therein are not related to the cost of rendering the service with respect to the different species and classifications thereof; that petitioners desire to show that the draft is a more equitable basis than the consignment for the assessment of rates and charges for their services; that the petitioners desire to show that the prescribed rates are not consistent with the level of cost or the trend of cost; that the petitioners desire to show that all existing man power was used during certain periods of 1933 in order to perform the necessary functions and that substantially all petitioners

operated at a loss; that the methods of buying used by the packing industry and the increase of direct buying by the packers necessitate the maintenance of organizations to handle widely varying volume of business from day to day; that petitioners will not be able to restore salaries to the level desired by the Administration; that the rates prescribed will necessitate throwing out of employment a large number of people; that petitioners desire to prove that the Chicago market is efficient in the handling and selling of livestock; that petitioners desire to prove that conditions which prevailed during 1933 constitute a greater change than has occurred during any twelve months prior thereto; that the monetary changes taking place in the country have increased the cost to the petitioners; and that the commission rates should be based largely on the cost of service and the benefits received by the rate payer; and

Whereas, on February 12, 1934, representatives of the Solicitor's Office of this Department filed a reply to the [fol. 207] petition for rehearing setting forth reasons for denying said petition, and

Whereas, respondents have submitted certain data purporting to support the allegations of the petition for rehearing, and

Whereas, careful consideration has been given to the petition for rehearing, the reply thereto, the data submitted, and the entire record in this proceeding has been reconsidered;

Now, therefore, it is ordered that the petition for rehearing be and the same hereby is denied.

It is further ordered that the Findings of Fact as set out in Section XXV, Paragraph 169, of the Findings of Fact, Conclusions, and Order of January 8, 1934, be and the same are hereby modified to read as follows:

XXV—Reasonable Rates

169. Upon the basis of all the foregoing and the entire record, it is found that rates not in excess of the following are schedules of just and reasonable rates:

Article I

Definitions

(1) A Consignment, for the purpose of assessing selling charges, is all the livestock of one species delivered in the

name of one person to one market agency to be offered for sale during the trading hours of one day.

(2) A Consignment, for the purpose of assessing buying charges, is all the livestock of one species bought at any time but shipped or delivered to one person on one market day.

(3) A Draft, is all those animals in one consignment weighed as a single sales or purchase classification.

(4) A Person, is an individual, a partnership, a corporation, and/or association of any such acting as a unit.

(5) Calves, are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 400 pounds or under.

(6) Light Weight Cattle, are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 401 pounds to 800 pounds.

[fol. 208] (7) Medium Weight Cattle, are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 801 pounds to 1200 pounds.

(8) Heavy Weight Cattle, are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 1201 pounds or over.

(9) Pigs, are swine, weighed in drafts, the average weight of the animals in which is 130 pounds or under.

(10) Hogs, are swine, weighed in drafts, the average weight of the animals in which is 131 pounds or over.

Article II

Selling Charges

Section A, Cattle and Calves

Calves:

Consignments of one head	45¢ per head
Consignments of more than one head	
1 to 15 head inclusive	30¢ per head
16 to 30 head inclusive	25¢ per head
Each head over 30	20¢ per head

Light Weight Cattle:

Consignments of one head	80¢ per head
Consignments of more than one head	
1 to 15 head inclusive	55¢ per head
16 to 30 head inclusive	45¢ per head
Each head over 30	35¢ per head

Medium Weight Cattle:

Consignments of one head	90¢ per head
Consignments of more than one head	
1 to 15 head inclusive	65¢ per head
16 to 30 head inclusive	55¢ per head
Each head over 30	45¢ per head

Heavy Weight Cattle:

Consignments of one head	$1.00 per head
Consignments of more than one head	
1 to 15 head inclusive	75¢ per head
16 to 30 head inclusive	65¢ per head
Each head over 30	55¢ per head

[fol. 209] Section B, Swine

Pigs:

Consignments of one head	30¢ per head
Consignments of more than one head	
1 to 25 head inclusive	15¢ per head
26 to 50 head inclusive	10¢ per head
Each head over 50	5¢ per head

Hogs:

Consignments of one head	35¢ per head
Consignments of more than one head	
1 to 25 head inclusive	25¢ per head
26 to 50 head inclusive	15¢ per head
Each head over 50	10¢ per head

Section C, Sheep or Goats

Sheep or Goats:

Consignments of one head	35¢ per head
Consignments of more than one head	
For the first 10 head in each 300 head	25¢ per head

For the next	50 head in each 300 head	15¢ per head
For the next	60 head in each 300 head	5¢ per head
For the next	130 head in each 300 head	2¢ per head
For the next	50 head in each 300 head	1¢ per head

Article III

Extra Service Charges

The following extra service charges are applicable to each consignment:

For each additional weight draft over 3, on account of sales classification	15¢
For each additional check, each additional account of sales, each proceeds deposit or bank credit, over 1	5¢

[fols. 210 & 211] Article IV

Buying Charges

The rates for buying livestock of the various species shall not be in excess of those for selling like species.

It is further ordered that the respondent market agencies, and each and every one of them, on and after April 4, 1934, cease and desist from demanding or collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges now on file with the Secretary of Agriculture.

It is further ordered that on and after April 4, 1934, neither the respondent market agencies nor any of them shall publish, demand, or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge hereinbefore determined to be just, reasonable, and nondiscriminatory for the furnishing of such service.

It is further ordered that at least ten days prior to the date upon which this order becomes effective each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule showing all rates and charges for the stockyard services furnished by such respondent at the Union Stock Yards, Chicago, Illinois, and all rules and regulations changing, affecting, or determining such rates or charges, and that no

rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just, reasonable, and nondiscriminatory for such service.

It is further ordered that a copy of this order be transmitted by registered mail to each and every one of the respondent market agencies.

In witness whereof the Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington this 12th day of March, 1934.

H. A. Wallace, Secretary of Agriculture.

[fols. 212-214] In United States District Court

[Title omitted]

Order Setting Cause, etc.—April 18, 1934

It appearing that the plaintiffs have heretofore filed their petition and complaint in the above proceeding, seeking an injunction, suspending or restraining the enforcement, operation or execution of a certain order and supplemental order of the Secretary of Agriculture, therein described, and praying for a preliminary or interlocutory injunction,

It is ordered by the court that said application for preliminary or interlocutory injunction in the above-entitled cause be, and it is hereby, set for hearing on Thursday, April 19, 1934, at the hour of Ten o'clock A. M., and Honorable Samuel Alschuler, United States Circuit Judge for the Seventh Circuit, and Honorable James H. Wilkerson, United States District Judge for the Northern District of Illinois, are called to the assistance of this court to hear and determine said application.

Dated this 18th day of April, 1934.

John P. Barnes, Judge.

[fol. 215] In United States District Court

[Caption omitted]

Interlocutory Injunction—Filed April 19, 1934

On this 19th day of April, 1934, came the petitioners and plaintiffs and presented to the undersigned judges of this

court, convened as required by statute, a verified petition and complaint supported by affidavits, in which petition and complaint it is prayed that an interlocutory injunction suspending and restraining the enforcement, operation or execution of the Order of January 8, 1934, and of the Supplemental Order of March 12, 1934, in Bureau of Animal Industry, Docket 402, of the defendant, Henry A. Wallace, Secretary of Agriculture, issue against the defendants and each of them, as in said petition and complaint prayed.

The Court being duly advised in the premises, finds that notice of application for such interlocutory injunction has been duly given to the defendants in accordance with law and that immediate and irreparable injury and damage [fol. 216] would result to the petitioners and plaintiffs unless such order for interlocutory injunction shall issue according to the prayer of the petition and complaint, and that the petitioners and plaintiffs are entitled to such interlocutory injunction as prayed.

Now, therefore, it is by this Court ordered that a writ of injunction issue out of and under the seal of this Court restraining and enjoining until the further order of this Court, the defendants, Henry A. Wallace, Secretary of Agriculture, Homer S. Cummings, Attorney General, and Dwight H. Green, District Attorney of the United States, for the Northern District of Illinois, and all of the officers, attorneys, solicitors, agents and representatives of the United States, and all other persons acting or claiming, or assuming to act for and under the authority of the defendants, or either of them, and all persons who now seek or attempt, or shall hereafter seek or attempt, to interfere with or abridge the rights of the petitioners and plaintiffs, or to do any act in anywise militating against the right of the petitioners and plaintiffs, to collect, demand, receive and retain rates and charges for stockyard services at the Union Stock Yards in Chicago, in accordance with the schedule of rates and charges of petitioners and plaintiffs now on file with the Secretary of Agriculture; and that each and all of the same persons be restrained and enjoined from instituting, prosecuting or aiding in instituting or prosecuting any proceeding or action for penalties, fines or imprisonment against the petitioners and plaintiffs, or their agents, because of failure to comply with said Orders of the Secretary of Agriculture of January 8, 1934 and of March 12, 1934, and from enforcing the execution

and operation of said Orders and each and every part thereof.

Provided, however, that the petitioners and plaintiffs shall deposit with the Clerk of this Court on the fifth day of each month hereafter, beginning with the 5th day of [fols. 217 & 218] May, 1934, while this Order may remain in force and effect and pending final disposition of this cause, the full amount for the preceding month, by which the charges collected under the Schedule of Rates in effect exceeds the amount which would have been collected for the same period under the rates prescribed in the Orders of the Secretary, dated January 8, 1934 and March 12, 1934, together with a verified statement of the names and addresses of all persons upon whose behalf such amounts are collected by petitioners.

(Signed) Alschuler, Wilkerson, and Barnes, Judges.

Dated Chicago, Illinois, April 19, 1934.

O. K. as to form. John S. Boyd. Wendell Berge. C. E. Miles. Dwight H. Green.

[fol. 219] In United States District Court

[Title omitted]

Answer—Filed May 14, 1935

First Defense

For their first defense to the petition and complaint in the above entitled case defendants aver that said petition and complaint fails to state grounds for equitable relief in that said petition and complaint fails to allege facts which show that the orders of the Secretary under attack are beyond the constitutional or statutory power of the Secretary to enter, that they are based upon a mistake of law, or that they are confiscatory as to any of the individual petitioners.

Wherefore, defendants pray that the petition and complaint be dismissed and that an order be entered accordingly.

Second Defense

Defendants in the above entitled cause answer the petition and complaint hereinbefore filed as follows:

1. Defendants admit the allegations contained in paragraphs (1) to (3) of said petition and complaint.

[fol. 220] 2. Answering paragraph (4) of said petition and complaint, defendants admit the allegations of fact contained therein. Defendants say that the last nine lines of said paragraph (4), beginning with the words "Said purported orders are arbitrary" merely contain conclusions of law which do not require an answer, nevertheless, defendants deny the allegations contained in said last nine lines.

3. Defendants admit the allegations contained in paragraph (5) of said petition and complaint.

4. Answering paragraph (6) of said petition and complaint, defendants say that the allegations with respect to the arbitration agreement and award of 1923 are irrelevant and immaterial to the validity of the Secretary's orders and to this suit. Nevertheless, defendants further say that the allegations contained in said paragraph (6) are not full, complete or accurate statements of the arbitration agreement and award of 1923; that said arbitration agreement and award are attached to the petition and complaint as Exhibit "A" and Exhibit "B" respectively, and reference may be made and had thereto as to the contents and meaning of said arbitration agreement and award. Defendants deny that a schedule of rates, charges and practices was "prescribed and found" by the arbitrators, and defendants say that said arbitration award was the result of voluntary action by the private parties thereto. Defendants admit that the schedule of rates and charges agreed upon in said arbitration have been in effect since September 15, 1923, and that the petitioners and others similarly situated have since that date adopted, followed and used the said schedule, and that the same has remained in effect without substantial alteration since September, 1923. Upon information and belief defendants deny that substantially all of [fol. 221] the petitioners operated at a loss during 1933.

5. Answering paragraphs (7) to (10) inclusive of said petition and complaint, defendants admit the allegations of

fact contained therein except that defendants say that in the seventh line of paragraph (8) the date of the order should be given as January 8, 1934, instead of January 8, 1933.

6. Answering paragraph (11) of said petition and complaint, defendants admit that the Secretary of Agriculture, and the United States Attorney for this district, under the direction of the Attorney General, will, except in so far as restrained by order of this Court, take appropriate action to enforce the order and supplemental order of the Secretary challenged in this suit. Defendants respectfully refer this Court to Sections 314, 315, 402 and 404 of the Packers and Stockyards Act, 1921, as indicating the scope of the duties imposed by the statute upon the several defendants with respect to the enforcement of orders of the Secretary of Agriculture.

7. Answering paragraph (12) of said petition and complaint, defendants say that the type of service rendered by the petitioners as market agencies at the Chicago Union Stock Yards is indispensable and invaluable to the agricultural industry as now organized in furnishing a market for, and necessary service to, the producers of live stock, and in distributing and selling live stock to agencies to prepare such live stock for human consumption or to live stock raisers or breeders for further production, but defendants say that the services of all of the petitioners as market agencies are not necessary or invaluable for the above purposes. With the above qualifications defendants admit the allegations of said paragraph (12).

8. Answering paragraphs (13) and (14) of said petition and complaint, defendants admit the allegations contained therein.

[fol. 222] 9. Answering paragraph (15) of said petition and complaint, defendants say that the allegations contained therein infer that in all cases the owners are the directing heads and themselves render the services of buying and selling. Defendants say that this is not so in all cases and that in many cases the owners do no buying and selling. With the above qualifications defendants admit the allegations contained in said paragraph (15).

10. Answering paragraphs (16) to (19) inclusive of said petition and complaint, defendants admit the allegations contained therein.

11. Answering paragraph (20) of said petition and complaint, defendants say that the allegation that "The petitioners do not enjoy a monopoly" is a conclusion of law which requires no answer, nevertheless, defendants deny said allegation. Defendants admit the other allegations contained in said paragraph (20).

12. Answering paragraph (21) of said petition and complaint, defendants deny the allegation that "Salesmen particularly must be employed by the year." Defendants admit the other allegations of said paragraph (21).

13. Answering paragraph (22) of said petition and complaint, defendants admit that the Secretary has found that the rates and charges adopted in 1923 upon arbitration are unreasonable and unjustly discriminatory now, and that the Secretary has made findings as to just and reasonable rates. The remaining allegations contained in said paragraph (22) are all either conclusions of law which require no answer, or statements of alleged fact irrelevant to the validity of the Secretary's orders and to this suit, which need be neither admitted nor denied, nevertheless, defendants deny each and every allegation contained in said paragraph (22) except as hereinbefore expressly admitted.

[fol. 223] 14. Answering paragraph (23) of said petition and complaint, defendants say that the matters contained therein are merely petitioners' conclusions of law with respect to the facts alleged in the subparagraphs of paragraph (23), and that such matters do not require an answer, nevertheless, defendants deny all of the allegations contained in said paragraph (23). Defendants' answer to the allegations contained in the subparagraphs of paragraph (23) is as follows:

(a) Answering the allegations of subparagraph (a) of paragraph (23), defendants admit that the rates and charges prescribed in the Secretary's orders are not based upon the median method, the modal method, the bulk line method, the market average method or percentage deviations from such methods, but defendants deny that the rates and charges prescribed by the Secretary's orders were not based upon any well-known or well-recognized statistical method or principle. Defendants deny that the rates and charges prescribed by the Secretary were evolved by guess

or supposition, and deny that the findings of the Secretary as to reasonable costs set up a standard of efficiency and cost which, because of the conditions and factors obtaining in the business of petitioners, cannot be attained or approximated. Defendants say that the table contained in said subparagraph (a), printed on page 16 of said petition and complaint, is misleading in that the figures given in the column headed "Costs found reasonable by Secretary" do not include the allowance for profit found by the Secretary to be reasonable. Defendants say that the matters contained in said table are irrelevant to the validity of the Secretary's orders and to this suit. With respect to that portion of subparagraph (a) which follows the aforesaid table and which begins with the words "In the foregoing table," [fol. 224] defendants, while saying that the matters contained therein are irrelevant to the validity of the Secretary's orders and to this suit, nevertheless admit the allegations of fact contained therein, except that defendants say that the figure "22.9" in the 9th line from the end should be "229."

(b) Answering subparagraph (b) of paragraph (23), defendants deny each and every allegation contained therein.

(c) Answering subparagraph (c) of paragraph (23), defendants admit that the Secretary found that the reasonable cost of salesmanship for selling cattle and calves was 16.67 cents per head; that the reasonable cost of salesmanship for selling hogs was 4.14 cents; and that the reasonable cost of salesmanship for selling sheep was 1.48 cents. Defendants say that the allegations with respect to the actual average cost of salesmen's salaries in 1932 are irrelevant to the validity of the Secretary's orders and to this suit and that they require no answer, nevertheless, defendants deny each such allegation. Except as hereinbefore expressly admitted, defendants deny each and every allegation in said subparagraph (c).

(d) Answering subparagraph (d) of paragraph (23), defendants admit that the Secretary classified cattle and swine into grades dependent upon weight, and prescribed rates and charges for each weight classification; otherwise defendants deny each and every allegation in said subparagraph (d).

(e) Answering subparagraph (e) of paragraph (23), defendants admit that the Secretary based his rates and charges for the selling of live stock upon the consignment basis rather than upon the draft basis, and that the sales of live stock are made by drafts, the number of animals in one consignment going over the scales at one time and that one consignment may and frequently does consist of sev-
[fol. 225] eral drafts thereby materially and substantially increasing costs and charges; otherwise defendants deny each and every allegation contained in said subparagraph (e).

(f) Answering subparagraph (f) of paragraph (23), defendants deny each and every allegation contained therein.

(g) Answering subparagraph (g) of paragraph (23), defendants admit that the Secretary found that it is reasonable to associate a salesmanship performance of 27,000 head or 1,000 cars of cattle and calves with a salary of $4500 and that the Secretary found that 16.67 cents was a reasonable per head cost for salesmanship for cattle and calves. With respect to each and every other allegation of fact contained in said subparagraph (g), defendants, while saying that each and every such other allegation is irrelevant and immaterial to the validity of the Secretary's orders and to this suit and need be neither admitted nor denied, nevertheless, deny each and every allegation contained in said subparagraph (g) except as hereinbefore otherwise expressly admitted.

(h) Answering subparagraphs (h), (i) and (j) of paragraph (23), defendants deny each and every allegation contained therein.

(i) Answering subparagraph (k) of paragraph (23) defendants admit that it has been customary on the Chicago market to charge approximately one-half of the whole rate for live stock resold on the market, and admit that no rate has been provided by the Secretary for handling "seconds" other than the rate for handling of fresh cattle, calves, hogs and sheep; otherwise defendants deny each and every allegation contained in subparagraph (k).

(j) Answering subparagraph (l) of paragraph (23), defendants admit that the Secretary considered reimburse-
[fol. 226] ment to cover management and to cover unin-

surable risk to be profit; otherwise defendants deny each and every allegation in said subparagraph (l).

(k) Answering subparagraph (m) of paragraph (23), defendants deny each and every allegation contained therein.

(l) Answering subparagraph (n) of paragraph (23), defendants admit that the Secretary denied the petitioners' petition for rehearing and amended petition for rehearing, but defendants deny that such action of the Secretary was arbitrary or unreasonable.

(m) Answering subparagraphs (o) and (p) of paragraph (23), defendants deny each and every allegation contained therein.

(n) Answering subparagraph (q) of paragraph (23), defendants admit that the method of cost determination used by the Secretary was not a purely statistical method; otherwise defendants deny each and every allegation contained in said subparagraph (q).

(o) Answering subparagraph (r) of paragraph (23), defendants deny each and every allegation contained therein.

15. Answerng paragraph (24) of said petition and complaint, defendants, while saying that the allegations contained therein are irrelevant and immaterial to the validity of the orders and to this suit, nevertheless, admit the allegations contained therein.

16. Answering paragraph (25) of said petition and complaint, defendants admit that the present rates and charges have not been changed since the arbitration award of 1923 and that the rates and charges in effect since such award was made have not been confiscatory. Defendants admit that since 1931 material reductions in salaries have been made; otherwise defendants deny each and every other allegation contained in said paragraph (25).

[fol. 227] 17. Answering paragraph (26) of said petition and complaint, defendants say that the matters contained therein are merely conclusions of law and require no answer, nevertheless, defendants deny each and every allegation contained therein.

18. Answering paragraph (27) of said petition and complaint, defendants say that the matters contained therein

are merely petitioners' conclusions of law with respect to the facts alleged in the subparagraphs of paragraph (27), and that the matters contained in said paragraph (27) require no answer, nevertheless, defendants deny each and every allegation contained in said paragraph (27). Defendants' answer to the allegations contained in the subparagraphs of paragraph (27) is as follows:

(a) Answering subparagraph (a) of paragraph (27), defendants admit that the gross actual and aggregate selling commissions for 1932 amounted to $2,824,372, but defendants say that any computations based upon aggregate figures of the businesses of all of petitioners or any number of them added together are irrelevant to the validity of the Secretary's orders and to this suit. Although saying that all of the allegations contained in said subparagraph (a) are irrelevant and immaterial, defendants nevertheless deny each and every allegation therein not heretofore expressly admitted.

(b) Answering subparagraphs (b) and (c) of paragraph (27), defendants say that the allegations contained therein are based upon the aggregate of business of all of petitioners and are therefore irrelevant and immaterial to the validity of the Secretary's orders and to this suit, nevertheless, defendants deny each and every allegation contained in said subparagraphs (b) and (c).

(c) Answering subparagraph (d) of paragraph (27), defendants say that the allegations contained therein are based upon aggregate figures taken from the businesses of [fol. 228] all of petitioners and that such allegations are therefore irrelevant and immaterial to the validity of the Secretary's orders and to this suit. Defendants admit, however, that the figures contained in subparagraph (d) are correct as to what they purport to show. Defendants deny that, upon the basis of cost considered reasonable by the Secretary, the petitioners in 1932 are deemed to have operated their businesses at twice the necessary cost.

(d) Answering subparagraph (e) of paragraph (27), defendants admit that the rates and charges prescribed by the Secretary will not be sufficient to reimburse all of the petitioners for their actual operating expenses if such actual operating expenses remain as high as in the past without

an increase in volume of receipts, and defendants say that this is irrelevant and immaterial to the validity of the Secretary's orders and to this suit. Defendants deny that the rates and charges prescribed will not be sufficient to reimburse petitioners for the expenses found to be reasonable by the Secretary in the rendition of stockyard services. Except as herein otherwise expressly admitted, defendants deny each and every allegation contained in said subparagraph (e).

(e) Answering subparagraph (f) of paragraph (27), defendants deny that the increased costs and charges resulting from the fact that one consignment may consist of several drafts are not recognized by the order and supplemental order of the Secretary. Defendants also deny that said order and supplemental order are confiscatory. Defendants admit that the rates and charges prescribed by the Secretary are upon the consignment basis.

(f) Answering subparagraph (g) of paragraph (27), defendants deny each and every allegation contained therein.

[fol. 229] (g) Answering subparagraph (h) of paragraph (27), defendants admit that from 1923 to 1932 the number of head of cattle received at the Chicago Union Stock Yards decreased by over 1,000,000 head; calves by almost 300,000 head; hogs by over 5,000,000 head; and sheep by substantially 1,000,000 head, and that decreases in volume have been most marked in the more recent years. Defendants deny on information and belief the allegation that the volume of live stock arriving at the Chicago stockyards is decreasing at an accelerated rate because of the production program of the Federal Administration. Defendants deny each and every other allegation contained in said subparagraph (h).

(h) Answering subparagraph (i) of paragraph (27), defendants admit that petitioners and other market agencies are required by the Packers and Stockyards Act, 1921, and by regulations of the Secretary thereunder, to post bonds for the protection of their customers, and that the surety companies issuing such bonds require collateral. Defendants deny upon information and belief that if the rates and charges prescribed in the order and supplemental order are put into effect the petitioners can reasonably fear that the

surety companies will cancel their bonds because of losses suffered under the new rate schedule. Defendants further deny upon information and belief that petitioners will be compelled to go out of business. Defendants further deny upon information and belief the allegation that during the last 12 months the bonds of several market agencies of the Chicago Union Stock Yards have been cancelled because the bonding companies have asserted that the losses sustained by the insured agencies in the conduct of their business made the collateral insecure.

[fol. 230] (i) Answering subparagraph (j) of paragraph (27), defendants deny each and every allegation contained therein.

(j) Answering subparagraph (k) of paragraph (27), defendants admit that the smaller draft and increase in per head sales on truck deliveries has increased petitioners' costs, but deny that the Secretary did not give adequate consideration to this increasing cost factor. Defendants admit that truck deliveries have increased since 1923 by approximately the percentages alleged. Except as herein expressly admitted, defendants deny each and every allegation contained in said subparagraph (k).

(k) Answering subparagraph (l) of paragraph (27), defendants admit that a variation of one pound in the average weight of a consignment of steers may cause, according to the prescribed rate, a difference of 15 cents per head commission for the sale of such a consignment of steers, while the cost of selling may not vary, but defendants say that such fact is wholly irrelevant and immaterial to the validity of the Secretary's orders and to this suit. Except as herein expressly admitted, defendants deny each and every allegation contained in said subparagraph (l).

(l) Answering subparagraph (m) of paragraph (27), defendants deny that the Secretary found that the reasonable cost of selling calves was 42 plus cents per head. Defendants say that the Secretary found that the total per head cost for selling cattle and calves was 42 plus cents per head, but this was not a finding as to the per head cost of selling calves alone. Defendants admit that the commissions prescribed for selling calves in the larger consignments are below 42 plus cents per head but say that such fact is irrele-

vant and immaterial to the validity of the Secretary's orders and to this suit. Except as herein expressly admitted, [fol. 231] defendants deny each and every allegation contained in said subparagraph (m).

(m) Answering subparagraph (n) of paragraph (27), defendants admit that the Secretary found that the reasonable cost for the sale per head of cattle and calves is 42.97 cents; of hogs 13.23 cents; and of sheep 4.85 cents. Defendants further admit that the Secretary found that the reasonable per head profit was 3.9 cents per head in the case of cattle and calves; 1.4 cents per head in the case of hogs; and .55 cents in the case of sheep. Except as herein expressly admitted, defendants deny each and every allegation contained in said subparagraph (n).

(n) Answering subparagraph (o) of paragraph (27), defendants admit that in ten years the percentage of each species handled by Chicago market agencies in relation to the other central stockyards in the middle west has declined by approximately the percentage figures alleged; otherwise defendants deny each and every allegation contained in said subparagraph (o).

(o) Answering subparagraph (p) of paragraph (27), defendants admit that the direct receipts by packers in relation to the receipts at the Chicago Stock Yards have increased as to all species by approximately the percentage figures alleged; otherwise defendants deny each and every allegation contained in said subparagraph (p).

19. Answering paragraph (28) of said petition and complaint, defendants say that the matters contained therein are merely conclusions of law which require no answer, nevertheless, defendants deny each and every allegation contained therein.

20. Answering paragraph (29) of said petition and complaint, defendants admit that the Secretary overruled and denied the petition for rehearing filed February 7, 1934, [fol. 232] and that said petition contained substantially the allegations which petitioners, in said paragraph (20) say that it contained. But defendants deny that the Secretary erroneously, improperly, arbitrarily or unreasonably overruled and denied said petition for rehearing.

21. Answering paragraph (30) of said petition and complaint, defendants admit that the Secretary overruled and denied the amended petition for rehearing filed April 9, 1934, and admit that said amended petition for rehearing contained substantially the allegations which petitioners, in said paragraph (30), say that it contained. But defendants deny that the Secretary erroneously, arbitrarily or unreasonably overuled and denied said amended petition for rehearing.

22. Answering paragraph (31) of said petition and complaint, defendants say that they will take such action as is appropriate under the law to enforce the Secretary's orders, except as restrained therefrom by this Court. Defendants admit that if and when the Secretary's orders become effective, petitioners will be permitted by law to collect only such rates as are prescribed in said orders. With respect to the allegations that petitioners will suffer irreparable injury unless, pending final determination, the orders of the Secretary are temporarily stayed and suspended, defendants respectfully refer to the order of this Court heretofore entered temporarily enjoining the enforcement of the Secretary's orders with the provision that the excess rates and charges collected over and above the rates and charges prescribed in the Secretary's orders shall be impounded by this Court monthly pending final determination of the issues herein. Except as herein expressly admitted, defendants deny each and every allegation contained in said paragraph (31).

[fols. 233 & 234] 23. Answering paragraph (32) of said petition and complaint, defendants deny each and every allegation contained therein.

24. Except as hereinbefore otherwise expressly admitted, defendants deny the truth of each and every allegation contained in said petition and complaint.

Wherefore, having fully answered, defendants pray that the petition and complaint be dismissed at the cost of the petitioners, that the temporary injunction heretofore granted by this Court be dissolved and petitioners be required to make full refund to all parties who have paid rates and charges to petitioners from and after April 20, 1934, which are or shall be in excess of the rates and charges pre-

scribed in the orders of the Secretary, and for the benefit of such other order or orders as the court may deem appropriate.

(Signed) Wendell Berge, Special Assistant to the Attorney General. Harold M. Stephens, Assistant Attorney General. Dwight H. Green, United States Attorney. Seth Thomas, Solicitor, Department of Agriculture. C. E. Miles, Attorney, Department of Agriculture. G. N. Dagger, Attorney, Department of Agriculture.

[fols. 235 & 236] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO AMEND PETITION AND COMPLAINT —June 12, 1934

Upon motion of the petitioners and plaintiffs, the Court being advised in the premises, be it and it is hereby ordered that leave be and leave is hereby given to the petitioners and plaintiffs to amend instanter their Petition and Complaint, heretofore filed herein, by inserting between Paragraphs 28 and 29 thereof, the following amendment:

28a. Each petitioner on his or its own behalf charges that the facts alleged in the foregoing paragraphs as to market experiences apply to his or its own business without substantial variation from the market experiences; that his or its own business is conducted economically, efficiently and at reasonable costs and with the exercise of sound business judgment as to costs and expenditures; that the rates, charges and practices prescribed by said Order and said Supplemental Order, if permitted to become effective and if enforced, will deprive him or it of his or its property and business without due process of law, and will deny to him or it the equal protection of the laws in violation of his or its rights under the Constitution and laws of the United States; and that the said Order and Supplemental Order are without warrant and authority of law and if put into effect and enforced will confiscate his or its property and business without due process of law and in violation of the

rights guaranteed by the Constitution and laws of the United States.

Enter.

Samuel Alschuler, Circuit Judge. James H. Wilkerson, John P. Barnes, District Judges.

Dated Chicago, June 12, 1934.

[fols. 237 & 238] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO AMENDMENT TO PETITION AND COMPLAINT—Filed June 25, 1935

Come now the defendants in the above entitled cause and answer the amendment to the petition and complaint hereinbefore filed, which amendment constitutes paragraph 28a of the amended petition and complaint, as follows:

1. Defendants deny each and every allegation of paragraph 28a of said petition and complaint, as amended.

Wherefore, having fully answered, defendants pray that said petition and complaint, as amended, be dismissed, and for the benefit of such order or orders as the court may deem appropriate.

Wendell Berge, Special Assistant to the Attorney General. Harold M. Stephens, Assistant Attorney General. Dwight H. Green, United States Attorney.

[fol. 239] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Equity No. 13829

C. H. ACKER, Doing Business as C. H. Acker & Company, et al.

vs.

UNITED STATES et al.

Narrative Statement of Evidence Before Statutory Court—Filed Dec. 17, 1935

[fol. 240] NARRATIVE STATEMENT OF EVIDENCE TAKEN IN THE ABOVE ENTITLED CAUSE BEFORE HONORABLE SAMUEL ALSCHULER, JAMES H. WILKERSON, AND JOHN P. BARNES, JUDGES OF SAID COURT, SITTING EN BANC COMMENCING MONDAY, JUNE 11, 1934.

Mr. George I. Haight, Mr. John S. Boyd, and Mr. M. K. Hobbs, appeared for the petitioners and plaintiffs; and

Mr. Wendell Berge, and Mr. C. E. Miles, appeared for the respondents and defendants.

[fol. 241] OFFERS IN EVIDENCE

There was offered in evidence on behalf of the petitioners and plaintiffs the original record, transcript of evidence and exhibits in Secretary of Agriculture vs. C. H. Acker, doing business as C. H. Acker & Company, et al., Bureau of Animal Industry Docket No. 402.

Upon the offer of testimony to support the allegations of the petition and complaint, Mr. Berge on behalf of the respondents and defendants objected to the admissibility of any testimony or evidence before the court on the following grounds:

1. That the case was before the court solely on the record before the Secretary of Agriculture.

2. That evidence to establish confiscation was not admissible because the pleadings did not properly tender the issue of confiscation and because evidence bearing on the application of the rate orders of the Secretary of Agriculture

since the Secretary's record was closed was not pertinent to the issue of confiscation.

"Judge Alschuler: In respect to the specific matter that was under consideration, namely, the introduction of evidence, after a more or less cursory examination of the bill, we suggest the possible advisability of some further amendment making the allegations of fact, not as to each particular person, except in the way of applying each as they are applied in the conclusion. I am merely offering our thought.

The balance of our judgment is that the evidence is in- [fol. 242] admissible, although of a general nature, but that in any event the question may be sufficiently in doubt that, especially in view of the facts as stated by Mr. Haight, it would be better to admit it and possibly reach a decision and decide it in view of the evidence, and perhaps, I presume, without the evidence, so that in case what we decide is reviewed by the Supreme Court they will have it all there, and in the interest of time they will have all of the facts before them from which they should decide we improperly excluded it, so without passing on the question in advance of the offer of the evidence——

Mr. Haight: Yes.

Judge Alschuler: —that is the conclusion we have reached.

Mr. Berge: May it please the Court, may we have it understood that my objection stands to all this testimony?

Judge Alschuler: Surely.

Mr. Berge: Then I can note an exception on the record to the ruling?"

Earle D. Mudd, called as a witness on behalf of the petitioners and plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Haight:

I am a consulting accountant located at the Tribune Tower, Chicago. Accounting has been my profession for twenty-five or thirty years; I have been a consulting accountant four or five years. I testified before the Commissioner in the proceedings brought by the Secretary (Bureau [fol. 243] of Animal Industry, Docket 402) and there

showed my qualifications and experience with the stockyards business.

I refer to Petitioner's Exhibit No. 1 entitled "Volume of Live Stock handled by Petitioners during the months ending April 30, 1934, showing the commissions under Secretary's rates as compared with Present Commission." This exhibit consists of seven sheets. I made it. I was assisted by the office organizations of the petitioners who supplied me with the detailed records which I summarized.

The work was done during the past six or seven weeks and all under my direction. The information in the exhibit was obtained from the petitioners' accounts of sales.

I am familiar with the Union Stock Yards in Chicago and with the offices of the various plaintiffs who appear in these proceedings. At the time this work was started these offices were located in the Exchange Building, Union Stock Yards. That building has since been destroyed by fire. The records of the plaintiffs were kept in their offices. I worked in their offices with the records. They were destroyed in the fire to which I have referred.

Exhibit 1 shows results for each petitioner firm and collectively for all firms for the four months ending April 30, 1934.

[fol. 244] The details in support of this exhibit were assembled and summarized under my supervision by the office organizations of the respective petitioner firms, and in the performance of this work each account of sale rendered by petitioners during January, February, March and April, 1934, except where records were destroyed in the fire, as indicated on the exhibit, was analyzed as to the number of head of livestock of each classification sold, and then repriced according to the Secretary's rates.

This detail was recorded on the forms printed similar to the arrangement of this schedule, including reference to each of the account of sales.

The account of purchases for this period were not so analyzed because the Secretary's orders of January 8 and March 12, 1934, were found to be ambiguous with respect to the buying rates, and by the time interpretations and explanations necessary to the proper application of these rates were received the fire had destroyed the purchasing records for the period here considered with reference to each of the parties. Each and all of their offices and account of purchase and account of sale records were de-

stroyed by the fire. The only records saved were the records which had already been turned over to me and were in my office in the Tribune Tower. Everything that was either in my sub-office in the Exchange Building or in the [fol. 245] offices of the petitioners was completely destroyed. I began to do this work immediately after the hearing on the preliminary injunction. The figures I am using here are figures that already had been recorded and away from the Stock Yards when the fire occurred. With respect to the details of account sales and account purchases there was nothing remaining at the Stock Yards after the fire. The only records remaining were some of their general books that were inside of insulated safes. All other records, even though they were in steel filing cabinets, were completely destroyed. The buying transactions handled by the commission firms embraced in this study are extremely small and are merely incidental to their selling activities. Furthermore, it has been indicated by subsequent impounding records that the Secretary's rates for buying are so seldom lower than the present buying rates that such differences, if any, would have been so slight as to have practically no effect on the percentages of reduction, the development of which was the sole object of this work and this schedule. Nevertheless, in order to avoid any possible effect upon the buying rates the total buying commissions for the entire period were added, though not in detail, before the percentages of reduction were calculated.

Before all of this analysis work had been completed and reconciled the fire of May 19, 1934, destroyed the accounts [fol. 246] of sales and the accounts of purchases of all of these petitioners. At that time, however, approximately eighty per cent of the total volume of business handled during the entire four months had been analyzed, and this volume was already considerably greater than the amount in volume required to indicate the effect of the Secretary's rates.

It will be noted that the net reductions in commissions which would result from the Secretary's rates with respect to each of these petitioners range from 14.09 per cent to 26.98, and that the average reduction for all petitioners under the Secretary's rates is 20.68 per cent. However, this 20.68 per cent, which indicates the extent of the reduction under the Secretary's maximum rates, does not

fully indicate the extent of the reduction in actual practice. This is because there is a class of business handled by these petitioners known as "seconds", which represent live stock sold for speculation on the market for which full rates are not and should not be charged because part of the selling activities are performed by the speculators themselves, which materially reduces the petitioners' costs. Since lower rates will have to be charged for this class of business, the practical effect of the Secretary's rates will be a reduction somewhat greater than the 20.68 per cent as here calculated. The impounding records for the period April 19 to May 31, 1934, show that the net reduction which would be caused by the Secretary's rates amounts to 22.41 per cent. That difference for the period up to May 31st [fol. 247] shows a net reduction, that is, the net difference between the over and under charges of 22.41 per cent.

Referring to Petitioners' Exhibit 1 at the left under the column, "Name of Firm", there appears the name of each petitioner firm. Following the first name, Adams, Corrick & Hatch, I read and interpret that horizontal line from the left end to the right end, and then any of us afterwards can read the whole document. The first group of columns under the heading of "Analysis of consignments and Secretary's commissions" contain the classification observed in the Secretary's order which under the head of "Cattle" are three-weight classifications, light, medium and heavy. Second, we have the classification "Calves", and further on "Swine", subdivided between pigs and hogs, and then sheep, and the two next columns covering extra charges,—the one column providing for extra drafts and the other for extra checks and account sales. The last column under that general heading represents the total commissions, each rate classification or each species having a column showing the amount of commissions applicable to it.

For instance, under the head of "Light Cattle" Adams, Corrick and Hatch handled 816 head, and the Secretary's commissions would have amounted to $448.50. Under the head of "Medium Cattle" the same firm handled 2540 head [fol. 248] for which commissions of $1,573.40 would have been charged according to the Secretary's rates. In the same manner each other classification has been priced out according to the Secretary's rates, with the result that Adams, Corrick and Hatch would have collected a total of

$6,357.71 selling commissions during the first four months of 1934.

The next group of columns shows what the actual commissions charged or the present commissions amounted to, which were $8,157.83, or the regular commissions, $52.40 for extra drafts and $67.10 for prorating and extra account sales,—a total of $8,277.33. This amount, when compared with the total commissions under the Secretary's rates, shows that the present rates involve overcharges of $1,967.04 and undercharges of $47.42. This makes a difference of $1,919.62 or 23.06 per cent.

In the vertical column headed "Present commissions" under the sub-head "Extra charges" we find "For drafts and prorating and A.S".

The charge for prorating is 25 cents, with a minimum charge of $1.00 and a maximum charge of $2.50. The charge for drafts, extra drafts, over three per consignment, is 15 cents each, with a maximum charge of $2.00.

I read from the rates now in force under the title "Extra Services": "Drafts. 1. Single Ownership. When requested or necessary to grade or sort car lots of livestock [fol. 249] of single ownership into market grades and classes, a charge of 15 cents shall be made for each draft over three drafts per deck—each draft to be represented by a separate scale ticket. Maximum charge $2.00". I think it was brought out in the record this morning that a "Draft" represents the unit of sale; that is to say, a carload of livestock may have to be sorted into several lots and sold in those lots and weighed in those lots. Each lot is considered a separate draft. This provision in the tariff provides an extra charge for the additional drafts over three. Some of the cars are double-decked. Sheep and hogs come in double-decked cars.

I turn to Petitioners' Exhibit No. 2. It is entitled, "Statement of commissions, costs and profits or loss under present commission rates as compared with rates under Secretary's order dated March 12, 1934." The basic figures for the year 1932 were taken from Petitioners' cost and statistical studies presented by me, at hearings before the Secretary. Those for the year 1933 were taken from annual reports rendered by Petitioners to the Secretary according to his instructions and on a form known as his P. & S. 3 Report. Those are the annual reports of the Petitioners to the Secretary of Agriculture. Those for the

year 1934 were taken from special reports prepared under my supervision by the office organizations of the petitioners and on a form like that used by the Secretary in his P. & S. 3 Report, the same methods being employed.

[fol. 250] The P. & S.-3 Reports for 1933 and the similar special reports for the first four months of 1934 show the commissions and expenses subdivided as between operating and non-operating, the latter covering such activities as the loan business sometimes conducted in conjunction with the commission business, the management of farms, feed lots, et cetera.

In all cases for these two years, as well as for the year 1932, all non-operating expenses and income were eliminated so that the costs and commissions as shown on this schedule pertain to the expenses and income applying only to the commission business. In addition to expenses so classified as non-operating, wherever an owner or an employe devoted part of his time to a non-operating activity a proportionate part of his salary was eliminated from the commission business expenses. This accounting practice has insured proper comparisons.

By numbering the columns on this schedule from 1 to 27, commencing with that for "Name of firm", my explanations will be facilitated. Columns 1 and 2 are self-explanatory, that is, the first one is the name of the firm and the second is the year. The number of head shown in column 3 covers all species, namely, cattle, calves, hogs and sheep.

Cost studies submitted appearing in this case before the Secretary were refined by the use of actual-time studies, and so forth, so that each of these three species could be [fol. 251] dealt with separately; but for the years 1933 and 1934 the figures were not so refined. Therefore, the combined results are used on this schedule for all three years. The commissions have been handled in the same manner so that comparisons are proper.

Column No. 4 shows the total actual commissions under present rates, and by dividing that amount by the number of head shown in column 3 the actual commissions per head were arrived at for column 5. Column 6 shows the per cent of Secretary's commissions to the actual or present commissions. The percentage for the respective firms were arrived at by deducting the percentage shown on Exhibit 1 from 100 per cent. In those cases where account sales had

been destroyed and percentages of reductions were not available the market average per cent was used.

The amount of commissions which would have been charged under the Secretary's order as shown in column 7 were arrived at by applying the percentages in column 6 to the amount of actual or present commissions shown in column 4.

It will be noted that the same percentages have been applied to all three years because the same commission rates which were in effect during 1934 were also in effect during 1932 and 1933.

[fol. 252] The commissions per head shown in column 8 are the result of dividing column 7 by column 3.

In columns 9 to 15 the petitioners' costs are shown, both including and excluding salary appraisal adjustments.

Salary appraisal adjustments were made in the case of owners only, and in those cases because approximately 29 per cent of all the owners failed to carry themselves on the books at any salary whatsoever, while many others carried themselves at mere nominal salaries or drawing accounts which were not intended to express their worth. With these omissions, costs would have been hopelessly incomplete and misleading. Therefore, an appraisal committee determined upon salary ratings which represented the value of the owner's services, and salary appraisal adjustments were made accordingly. In cases of omitted salaries the Government accountant in his costs and statistical studies substituted the owner's profits, if any, for salaries in arriving at costs, and this accounts for the fact that these complete omissions are not so apparent on the schedule, although the amounts clearly indicate that they are grossly inadequate.

Going back to the beginning of this group of columns, column No. 9 shows the salaries of owners before appraisal adjustments were made, including profits where profits were substituted for salaries. Column 10 shows the sal-

[fol. 253] aries of employees and all other expenses. Column 11 shows the total cost before salary appraisal adjustments were made, and by dividing the number of head shown in column 3 into the amount shown in column 11 I arrived at the cost per head, excluding appraisals.

Column 13 shows the amount of adjustments which were made in order that the cost might be complete with respect to owner's salaries.

For the year 1934, where but four months' results are shown, the amount of appraisal adjustments were correspondingly reduced.

Consideration was also given to changes in ownership during the three periods covered by this schedule.

Column 14 is the total of columns 11 and 13 and represents the total cost, including salary appraisal adjustments.

The cost per head shown in column 15 is the result of dividing column 14 by column 3.

In the next group of columns under "Profit or Loss," the results have been stated in four different ways so that consideration could be given from every viewpoint.

The results based on present commissions have been shown both including and excluding the salary appraisal adjustments, and the same is true of the results based on [fol. 254] the Secretary's commissions.

Results have been shown to both include and exclude the salary appraisal adjustments because one might otherwise get an exaggerated impression of the effect of these adjustments on costs and profits and losses.

It will be noted that the effect of these adjustments doesn't greatly disturb the market or average results, but that they do rectify what would otherwise have been seriously irregular costs in the cases of the individual firms affected.

Going back to the beginning of this group of columns we have column 16 which shows the total profit or loss based on present commissions, excluding appraisal adjustments. This amount is the difference between columns 4 and 11.

The profit or loss per head shown in column 17 was arrived at by dividing column 16 by column 3, or it could be arrived at by taking the difference between column 5 and column 12.

The percent of profit or loss shown in column 18 was determined by dividing column 11 into 16.

Column 19 shows the total profit or loss based on present commissions, including appraisal adjustments. This amount is the difference between columns 4 and 14.

Profit or loss per head shown in column 20 was arrived at by dividing column 19 by column 3, or it could have been [fol. 255] determined by taking the difference between columns 5 and 15.

The percent of profit or loss shown in column 21 was determined by dividing column 14 into 19.

Column 22 shows the total profit or loss based on the Secretary's rates, excluding appraisal adjustments. This amount is the difference between columns 7 and 11.

The profit or loss per head shown in column 23 was arrived at by dividing column 22 by column 3, or it could have been determined by taking the difference between columns 7 and 12.

The percentage of profit or loss shown in column 24 was determined by dividing column 11 into column 22.

Column 25 shows the total profit or loss based on the Secretary's rates, including appraisal adjustments. This amount is the difference between columns 7 and 14.

The profit or loss per head shown in column 26 was arrived at by dividing column 25 by column 3, or could have been arrived at by taking the difference between columns 7 and 15.

The percent of profit or loss shown in column 27 was determined by dividing column 14 into column 25. A discrepancy in figures appears in some instances between Petitioners' Exhibit No. 1 and Petitioners' Exhibit No. 2 with respect to the amount of commissions. In the first place, there is no occasion for having an agreement between [fol. 256] those two exhibits in that respect because Exhibit 1 is merely an analysis of the current volume available, and as long as the volume available was sufficient to be representative of the effect of the Secretary's rates it made little or no difference whether it was 50, 60, 70, 80, 90 or 100 per cent complete. However, in the preparation of Exhibit No. 2 the commissions represent the entire volume as booked for the period, except where the records were destroyed by the fire.

On Exhibit No. 2, profit and loss schedule, in the second horizontal line, Adams, Corrick and Hatch, for the first four months of 1934 commissions are given as $6,364.00 in column 7.

On Exhibit No. 1 we find the commissions for the same firm for the same period $6,405.75. That is in the total column under analysis of consignments and Secretary's commissions. To explain that difference—the amount shown on Exhibit No. 1 is the sum total of all of the accounts sales analyzed during the first four months of 1934. The amount

shown on Exhibit 2 represents the commissions, the total commissions, as would have been booked for that period under the Secretary's rates.

I might add in this connection that some of the differences between the two figures now in question are caused by the fire destroying some of the records before the analysis was completed, and other differences were caused by the fire [fol. 257] destroying the records before the two figures could be reconciled; but, as I previously stated, there is no reason why the two figures should agree for the reason that Exhibit No. 1 is an entirely independent statement designed merely to determine what the percentage of reduction under the Secretary's rates was, and whether the complete volume was taken or not, as long as the volume was sufficient to be representative of the effect of the rates, any slight differences between these two sets of figures would have no meaning whatsoever.

Petitioner's Exhibit 3 consists of three sheets. Sheet 1 covers the year 1932, sheet 2 the year 1933 and sheet 3 the first four months of 1934.

The costs per head used for this schedule were taken from the Secretary's order dated January 8, 1934. The object of this schedule is to develop the Secretary's weighted average cost per head for all species combined, but separately for each petitioner, in order that comparison may be had with the petitioner's actual costs and indicating the extent to which his costs are inefficient. The number of head of each of the three different species handled by each firm has been shown. To these amounts the Secretary's reasonable costs per head as shown in the upper left hand corner of the exhibit have been applied and the Secretary's reasonable costs shown.

By cross-footing the number of head and the Secretary's reasonable costs for the three species, the number of head and the Secretary's costs for all species was arrived at [fol. 258] and shown.

Following this the Secretary's weighted average reasonable cost per head was determined for all species combined, by dividing the number of head into the Secretary's costs.

It will be noticed that this procedure develops a different cost per head for all species combined, in the case of each petitioner, because each species has a different unit cost, and the weight of volume in each case governs the level of the weighted average.

Furthermore, because the petitioners weighted average cost was arrived at in the same manner, the two unit costs are comparable.

These comparisons are to be presented in the form of a graphic chart. Now, as to how these figures were determined in the case of an individual firm, we can take firm No. 1, which shows 1095 head of cattle and calves in the first figure column. This was multiplied by the Secretary's cost per head for cattle and calves, shown as 42.97 cents, which produced the Secretary's cost of $471 for the handling of this number of head of cattle and calves.

[fol. 259] Now, the same procedure was followed with respect to the 3805 head of hogs. On this the Secretary's cost was 13.23 cents. And it also applied to the 372 head of sheep. On this the Secretary's cost of 4.85 cents per head was applied.

The sum total of the number of head of all three species in the case of this firm was $5272., and the sum total of the Secretary's cost applicable thereto was $992., which resulted in the Secretary's cost per head for all species of 18.82 cents. The rest of the lines would be read in the same way.

Judge Alschuler: "This sheet has a hundred and eleven. How do you select them out of a total number of petitioners and plaintiffs? There are 160 or 170 complainants are there not?

"A. These are the firms known as commission firms. There is another group of firms known as order buyers who make up the difference between this number of firms and the total number."

In order to give you a thorough understanding of Exhibit No. 3, I would like to point out that although the unit costs as shown in the last column were based, in the case of each and every firm, on exactly the same unit cost for each specie that each one of those firms have a different average unit cost, and I will show you why that is by taking for illustration a firm who may handle one head of cattle at the Secretary's reasonable cost of 42.97 cents; one head of hogs at the Secretary's reasonable cost of 13.23 cents; and one head of sheep at the Secretary's unit cost [fol. 260] of 4.85 cents. The total costs for those three head would be 61.05 cents, and the average for those three yead would be 20.35 cents.

Now, if that same firm had handled two head of cattle, instead of one, and one head of hogs and one head of sheep, the average would have been 26 cents. And if that same firm had handled one head of cattle, one hog and two sheep, the average would have been 16.48 cents.

In other words, it is important, I think, all through the explanation of these exhibits to realize that the fluctuation in the unit cost of all species does not represent either efficiency of inefficiency, because in these cases we have dealt with precisely the same unit cost for all firms and for each different specie and yet we have arrived at a cost which fluctuates from 4.85 cents to 42.97 cents.

Nevertheless, it is proper to have those fluctuating average costs, inasmuch as they are properly comparable with commissions which have been developed on exactly the same basis. But I wanted to make this explanation so that you would understand that these fluctuations have nothing whatever to do with either efficiency or inefficiency.

Now, if we get back to just one specie, as for instance, cattle and calves, the same thing is true with respect to any one specie. That is to say that cattle and calves arrive in straight cars. They arrive as single ownerships. They [fol. 261] also arrive in straight cars, as plural ownerships, owned by more than one owner. It costs more, of course, to handle plural ownership consignments than it does to handle single ownership consignments.

Then, we have another class of receipts known as mixed singles, which means that there is more than one specie in the car, but owned by one owner. Then we have a class of business known as mixed plurals, meaning that there is more than one specie in the car, but owned by more than one owner. It costs more to handle mixed cars than it does to handle straight cars. In the case of cattle and calves, 53.94 per cent of those cars are straight singles; 15.25 per cent are straight plurals; 2.37 per cent are mixed singles; 3.86 per cent are mixed plurals; 13.16 per cent are drive-ins; that class of business which is trucked in; and 11.42 per cent are seconds, which mean that class of business sold for speculators who operate locally in the Yards. Those figures are for 1932.

Now, as I started to explain, it costs more to handle a mixed shipment than it does a straight shipment. It costs more to handle a drive-in than it does where you have a straight or mixed shipment with the possible exception of

some mixed plural ownerships, where many owners are in the car.

[fol. 262] "Judge Alschuler: So that causes that many more sales?

The Witness: A. Yes, causes that many more sales, exactly, and because the shipment must be broken up into more units in order to be sold and in order to be weighed, and otherwise handled through the Yards separately."

Each shipment must be separate, each package, that is to say, each draft, or each sales unit. If there is a car and one man has a third and you have a third and the other third belongs to another man, when that car is empty, the broker must divide it up into separate lots that represent the owners and classes. And it is weighed separately, so that you will get what was received for your particular animals as compared with what someone else gets for his animals; although they were in the same car when they arrived. The broker has charge of it from the time it is received in the Yards until the time it is sold and passed over the scale to the packer.

Now, because of the plural ownerships and the necessity for breaking the shipment into many parts, it costs more to handle the plural ownership than it does the single ownership, and in the case of mixed cars, even though they may be single ownership, it costs more to handle them than it does a straight, because of the different species having to be separated and handled separately.

[fol. 263] "Judge Alschuler:

Q. Did the Secretary take that into consideration?

A. Apparently, he has not, in this reasonable cost because he only gives us one cost on all kinds of shipments of cattle and calves.

Q. Yes, but in fixing that one cost did he have evidence before him on the subject of plurality of owners, on quality and on class; that is, these things to which you have referred?

A. Yes. Information as to the extent to which the varying kinds of shipments were received was in the record.

Q. Well, does he refer to that in his opinion, or is it just the term that is taken, or is it from the result that you think he did not take that into consideration?

A. There is no explanation in the order to indicate how he arrived at this cost of 42.97 cents for cattle and calves.

Judge Alschuler. Very well."

Whether he took these things into consideration or not, I do not know, but I do know that these conditions underlying the costs do exist and are reasons why one class of business costs more to handle than another class of business.

"Mr. Berge: But, in the Secretary's order attached to the exhibit to the complaint this subject is discussed at some length. And a charge is set forth here which is in the order and is based on the evidence of the record which dealt with this very subject.

The Witness: What page is that on?

Mr. Berge: Page 64, opposite Page 64 of the printed petition. I do not mean to analyze the charge, but merely as it bears on the question of whether the Secretary considered it or not.

[fol. 264] Mr. Haight: Our position is that the Secretary discussed many things in the order and had many things before him on the record that find no reflection whatever in the result and that is one of the things we are complaining of.

Judge Alschuler: That is another question."

Now, in the same way that the unit cost of the various firms for all species will fluctuate on account of the varying costs of the different species and the varying volume of the different species handled, so will the cost for cattle and calves alone fluctuate, because of the varying volumes of straight car singles, straight car plurals, mixed singles, mixed plurals, and drive-ins and cause the unit cost to fluctuate. And when that cause does operate, it is obvious that the fluctuation in the cost does not have anything whatever to do with either inefficiency or efficiency.

So that in observing the fluctuations in the costs shown in these exhibits, it must be considered that to whatever extent those fluctuations arise out of varying amounts of different classes of business handled, that it has no meaning whatever insofar as efficiency and inefficiency is concerned.

Now if we will take any one class of business for any one species and consider in the same way, as for instance, straight car singles, we will find that exactly that same condition exists further back in the operation.

[fol. 265] If we receive a straight car of cattle consisting of twenty head and that entire car is handled through the Yards and sold and weighed as one unit, the cost of handling it is not nearly as great as though that same car had to be broken up into several different units, at the request of the buyer or because there were different grades of cattle in that shipment.

So that even when we boil the cost down to what is recognized as the smallest unit, that is, one specie and mode of arrival and one ownership, we still have influences that operate within that unit which will cause fluctuations in the unit cost which have nothing whatever to do either with efficiency or inefficiency.

And so this explanation, I believe, will indicate that the unit cost as developed in these records must be considered from a somewhat different standpoint than unit costs in the ordinary manufacturing or other business.

In order to judge costs we must not only weigh the number of head of each specie and we must not only weigh the classification of the arrivals of the business under each specie, but we must also consider the number of bunches in which this livestock must be broken up, and the size of those bunches, in order to arrive at any reasonable conclusions as to efficiency or inefficiency in the unit cost.

[fol. 266] In addition to the number of bunches a different shipment may be broken up into, the costs are influenced by the size of the bunches which a shipment is broken up into. If a shipment of twenty head is broken up into two bunches of ten head each, then the cost will be influenced according to the cost of handling a bunch of ten head, but if the shipment is broken up into a bunch of five head and another bunch of fifteen head, different cost factors are involved and influence the cost of handling that shipment, because, in many respects, it costs as much to handle five head as it does to handle fifteen head. Fifteen head can often be driven down the alley from the receiving docks to the sales pen for the same cost as five head could be driven down that same alley. There would be no difference in cost at all in such cases. Therefore, the cost of handling a

consignment, irrespective of the mode of arrival is greatly influenced by the number of bunches into which it is broken up and the size of those bunches.

There are certain pens allotted to each commission firm and they sort the livestock into those pens. Where the shipment is large enough and there are enough pens, they will, and as a general practice, they would have a separate pen for each owner. The livestock in a given pen does not represent the unit of sale. Several pens may be sold together, or one pen may be broken up into fifteen or twenty parts before it is sold. When it comes to weighing, then you have to get the weight of each shippers' stock separately [fol. 267] and each sale separately. And each sale made for that shipper separately. The shipper may have twenty head of cattle and the commission man may have to make ten or fifteen sales in order to dispose of it. Those ten or fifteen sales must be weighed separately.

Petitioners' Exhibit 4 is entitled "The cost per head for the year 1932, including salary appraisal adjustments, as compared with the commissions per head for the year 1932 under the Secretary's rates." This chart was prepared for the purpose of comparing the petitioners' costs per head with the commissions per head under the Secretary's rates. There are three sheets in this exhibit—the first one covering the year 1932, the second one the year 1933, and the third the year 1934. The figures in the column to the extreme right and the other column to the extreme left which run up from 0 to 100 indicate the cents per head. The numbers across the top of the chart and also the bottom refer to the various commission agencies. Those are the same numbers that were used through the proceedings before the Secretary to indicate the various commission houses here involved, with the exception that certain firms have entered the business since then, and in these years 1933 and '34 additional numbers have been given to the new firms.

Some of them quit also, and in those cases the columns have been left vacant. The identity of the firms so numbered may be found in the first two columns on schedule [fol. 268] No. 7, Exhibit 2; for brevity they were not repeated on this chart.

The heavy line which will be found for the most part at the upper section of the dense area on this chart represents the Petitioner's cost per head, including salary ap-

praisal adjustments. The light line, which for the most part will be found at the bottom of the dense area, represents the Secretary's commissions per head. Therefore, the dense area between these two lines represents the Petitioner's loss which would be experienced under the Secretary's rates.

For example, firm No. 1 had a unit cost during the year 1932 or 63.77 cents, whereas the Secretary's rates would allow that firm commissions of 27.24 cents. The line, the heavy line at the top, you will note runs opposite the 63 or 64 cent line, while the light line at the bottom runs just above the 27 cent line. The same explanation follows with all of the firms. In the case of No. 3 the Petitioner's cost was 35.02 cents during 1932. That is where the heavy line strikes the center of No. 3 column and the light line strikes the center—In fact, the point of the light line is in the center of No. 3 column, showing the Secretary's commissions to be 33.87 cents.

"Judge Alschuler: Then take No. 57. They don't have much of any cost at all. It gets way down below 10 cents, or possibly more; 11 cents.

A. No. 57 is a firm specializing in the handling of sheep, and its unit cost is, therefore, very low.

Judge Alschuler: Well, I thought these were computed [fol. 269] on all heads together.

A. All heads together.

Judge Alschuler: If one commission firm handles sheep and cattle, it is the sum of the cattle and the sheep?

A. Exactly.

Judge Alschuler: We would have to go back then and look that up and see how that happened; to see how relatively and to what extent they are on the same basis here?"

That is exactly why I made my explanation awhile ago that you would have to consider the weight of volume of the different species, and then after doing that you would have to consider the modes of arrival under each specie, and after doing that you would have to consider the size and number of packages in which those various arrivals were shown in order to be able to judge efficiency or inefficiency. And where costs go down very low my conclusion generally would be that that would indicate those firms

who handle livestock that can be handled more cheaply, such as sheep and hogs.

There are a few firms as will be noted on this chart where the heavy line indicating cost runs beyond $1, and in those cases the figure entered at the top of the line indicates where it would have stopped if the chart had been extended. Those are cases of very small firms whose volume has been depleted for various reasons, perhaps direct buying, and so forth, and the owner is still endeavoring to hang onto [fol. 270] his business, having spent his lifetime in it, with the result that he is unable to make a proper cost on the small volume that he handles. That subject will be taken up by me later, and those firms will be dealt with separately. All of the figures represented by the lines on this chart are shown on Petitioner's Exhibit 2.

Petitioners' Exhibit 5 for identification shows in graphic form the cost per head, including salary appraisal adjustments, as compared with the Secretary's reasonable cost per head. The first sheet covers the year 1932, the second sheet the year 1933 and the third sheet the year 1934.

The heavy line usually to be found at the top of the dense area represents the Petitioner's actual cost. The light line usually to be found at the bottom of the dense area represents the Secretary's reasonable cost.

The figures supporting the heavy lines were taken from Petitioners' Exhibit 2, and the figures representing the light lines were taken from schedule Petitioners' Exhibit 3.

The dense area between the dark or the heavy and the light line represents the extent to which the various petitioners would have to reduce their costs in order to meet the Secretary's reasonable cost.

For example, firm No. 1 has a cost per head of 63.77 cents [fol. 271] as indicated by the fact that the heavy line stops just under 64 cents, while the costs found reasonable by the Secretary for that firm would be 18.22 cents as indicated by the light line which stops just under 19 cents. The Secretary finds that the reasonable cost for cattle and calves is 42.97 cents, for hogs 13.23 cents and for sheep 4.85 cents. When those costs are applied to the volume of the various species handled by firm No. 1 it produces an average cost for that firm of 18.82 cents. That includes all three species, the average of things.

"Judge Barnes: Q. The black line on Exhibit 5 is the same as the black line on 4?

A. Exactly, because the heavy black line on both charts has to do with the petitioner's actual costs. The comparison indicated by the light line, however, is different in each case. In other words, Exhibit No. 4 compares the actual cost with the commissions per head, while Exhibit No. 5 compares the actual cost with the Secretary's reasonable cost, so that the black line in both instances would be the same?"

The gaps on sheet 3 of Exhibit 5 represent firms that were out of business during 1934 or whose records were destroyed by fire before we could make up these exhibits, and the explanation that applies to each one of them will be found either on Exhibit 1 or Exhibit 2 adjacent to the name of the firm.

Petitioners' Exhibit No. 6 is entitled "Per cent of profit or loss under present rates, including salary appraisal adjustments, as compared with the per cent of profit or loss under the Secretary's rates for the year 1932" on the first [fol. 272] sheet, 1933 on the second sheet, and 1934 on the third sheet of said exhibit.

On this chart the heavy line indicates the per cent of profit or loss under present rates and the light line indicates the per cent of profit or loss which would be experienced under the Secretary's rates. The dense area between these two lines indicate the reductions caused or which would be caused by the Secretary's rates on the same amount of business. The first sheet refers to the year 1932, and the application of the Secretary's rates has been made on exactly the same volume as was actually delivered during that year.

It will be noticed in the case of firm No. 2, for example, that although this firm during the year 1932 handled 72209 head of livestock, which is a very sizeable business, it nevertheless lost 9.33 per cent in its operations for that year. The loss is based on the amount of the firm's expenses. For instance, if the firm spent $100,000 and the commissions only amounted to $80,000 there would be a loss of 20 per cent.

Now, in the case of this particular firm for the year in question, 1932, they spent $28,163.00 in the handling of

business on which they were paid commissions of only $25,534, creating a loss of $2,629, or 9.33 per cent. Now, under the Secretary's rates instead of receiving $25,534 for hand- [fol. 273] ling that same amount of business they would have received only $19,646, and, therefore, they would have experienced a loss of $8,517 or 30.24 per cent instead of 9.33 per cent. In other words, a loss which was already bad would have been made considerably worse.

In the case of firm No. 4 they handled a still larger business, a much larger business—384,023 head of livestock—during the year 1932, made a profit during that year of 12.86 per cent, but under the Secretary's rates there would have been a loss of 9.81 per cent. That same firm for the year 1933 did experience a loss of 1.12 per cent under the existing rates, but under the Secretary's rates the loss would have been 20.98 per cent. During the year 1934 they were more fortunate. They had a profit of 11.46 per cent, and the loss under the Secretary's rates would only have been 10.93 per cent.

In the case of firm No. 6, another firm doing a sizeable business, handling 116,027 head of livestock, it experienced a loss during 1932 of 18.79 per cent, but if the Secretary's rates had been in effect during that year the loss would have been 31.48 per cent. During 1933 that same firm had a loss of 9.79 per cent, but under the Secretary's rates the loss would have been 23.89 per cent. During 1934 that same firm had a loss of 7.05 per cent, but under the Secretary's rates it would have been 21.58 per cent.

[fol. 274] The comparisons are made on exactly the same volume of business. The volume of business during the three periods changed slightly. For instance, during 1932 this firm handled 116,027 head of livestock, during 1933 it handled 112,764 head, and during the first four months of 1934 it handled a proportionate amount—36,075 head.

"Judge Alschuler: Q. Yes, but how about the expenses? Have they differed during these years?

A. The expenses have differed, yes, sir. This firm in question, No. 6, had expenses during 1932 of $50,807. During 1933, with slightly less business, their expenses were $48,225, and during the first four months of 1934 their expenses were a proportionate amount—$14,600.

Judge Alschuler: Q. So if they lost in one year they would

probably lose in the other, and if they gained in one year they would probably gain in the same proportion in the other.

A. On the same volume of business, yes, sir. Of course, if the volume of business falls or rises, the situation may change.

Judge Alschuler: Q. It may, yes; but expenses may be less.

A. Yes, sir."

Now, I would like to give you some idea as to what it means to handle 112,764 head of livestock. For firm No. 6 the amount of money involved in the handling of that amount of livestock for the year 1933 was $1,868,243.23. In [fol. 275] other words, this firm, who lost 9.79 per cent on their business for the year 1933, and who would have lost 23.89 per cent under the Secretary's rates, actually handled for farmers nearly two million dollars of livestock, and, since they operated at a loss, it may be said that they paid the farmers for handling it, for allowing them to handle it for them. For the year 1933 gross expense was $48,225 and for the same year the actual commissions were $43,506, and the Secretary's commissions would have been $36,706.

The source of the information from which this graphic chart, Petitioners' Exhibit 6 is Exhibit 2. On Petitioners' Exhibit 6 on the third sheet thereof dealing with the year 1934, a dotted black area appears at the right below the zero line. That is the result for all of the firms combined.

"Judge Alschuler: Q. That is they were below the profit line in all those years under the old rate, all combined?

A. That is correct. The actual results for the first four months of 1934, as shown by Exhibit No. 2 is that they lost, all firms combined, lost 1.12 per cent, whereas under the Secretary's rates the loss would have been 21.66 per cent."

In the case of firm No. 18, which is one of the largest firms operating on this market, and which is also one of the largest firms operating on ten or twelve other markets, and is known to be a very highly efficient firm, during the year 1932 it made a profit of 26.81 per cent, but under the Sec- [fol. 276] retary's rates it would have experienced a loss of 2.09 per cent. Similar reductions would have been experienced for the other years, for 1933 and the first four months of 1934.

"Judge Alschuler: Q. I want to get that right. When you say they made a profit of 20 per cent—that is, 20 per cent of what they took in was profit——

A. Their income was 20 per cent or 26.81 per cent more than their expenses."

In this particular firm their expenses were $141,612.00, and the Secretary's commissions would have been $138,-654.00. Now the difference between those two figures, or the amount which the expenses exceeded the income, was $2,958.00 which represent 2.09 per cent.

In this business the matter of investment is of very little consequence. About the only thing they have is furniture and fixtures and working capital. Therefore, percentages are not applicable to investment. In any event and really in any business the percent of profit is worked out on exactly the same basis we worked it out here. You may have statistics showing what your percentage of profit is to your investment, but in Wall Street the percentage of profit means just what it means here. It means the profit made on the cost of sales.

In the case of firm No. 19, which firm handled 135,485 head of livestock during 1932, it experienced a loss during [fol. 277] that year of 24.86 per cent, but under the Secretary's rates that loss would have been 40.73 per cent. In 1933 that same firm experienced a loss of 23.35 per cent, whereas under the Secretary's rates the loss would have been 39.54 per cent. During the first four months of 1934 it experienced a loss of 23.01 per cent, whereas under the Secretary's rates the loss would have been 39.27 per cent. The value of the livestock handled by that firm was approximately two million dollars, and after handling that much livestock for shippers they experienced the losses which I have indicated, and would have experienced much greater losses under the Secretary's rates.

In the case of firm No. 18 during the year 1933 they handled 873,558 head of livestock, valued at $11,657,551.49. Their result during 1933 was a considerable profit, and would still have been a profit under the Secretary's rates, but during 1932 and the first four months of 1934 there would have been a loss in both periods under the Secretary's rates in spite of the fact that they handled over $11,-000,000 worth of business for shippers.

"Judge Alschuler: Q. Do you find in these charts concerns doing substantially the same kind of business and substantially in the same amounts any very substantial difference in the result of their business for the several years? I mean so far as profit and loss are concerned.

[fol. 278] A. Your Honor, there are no two firms operating on this market whose business can be said to be similar. There are variations between the different species which make it practically impossible to compare one firm with another; but taking the cost separately for each specie, as was done for the year 1932 in the record, we can get some comparison, provided the factors that exist to disturb the comparison are sought out and given consideration, but in order to uncover these dist*ru*bing elements it is necessary to make a very thorough examination of the operations of this firm on the ground, and it cannot be done from a distance. In other words, figures alone will not point to the influence of these varying factors which operate to throw one firm out of comparison with another.

In the case of firm No. 21, and I might say, your Honor, that I do not like to make a long story of this, but I think it is important that the record indicate that these conditions are not conditions that apply to a few firms. They apply practically all the way through to all the firms. There are so few exceptions that I feel that if I neglected to mention enough of these cases to indicate that, that the condition is general, that it might be felt that it was only spotty; and so I would like to mention some more of these cases."

Firm No. 21 handled during the year 1932 177,252 head of livestock. They had expenses of $73,290.00 and they had an actual income of $63,721.00, creating a loss of $9,569 or 13.06 per cent. Under the Secretary's rates the income would have been reduced from $63,721 to $50,543, which would have increased the loss to $22,747 and made it 31.04 per cent instead of 13.06 per cent. In the year 1933 this same firm handled a slightly lower volume of business—154,809 head—and experienced a loss of 9.70 per cent, but [fol. 279] under the Secretary's rates the loss would have been 28.38 per cent.

"Judge Alschuler: Q. Pardon me just a moment. Take that firm: Did you trace that back to see whether during the course of the years, five, six or eight years, there has

been a substantial reduction of their total business or whether that has been about the volume of it for years back?

A. Firm by firm I did not, but for the market as a whole I did. As a general rule, the trend of the market follows, with few exceptions, in the case of individual firms. There are a few firms that will break away and will be able to get more business in spite of others having a decrease; but very few.

Judge Alschuler: Q. Whether this was one of them you do not know?

A. No, sir, I am not prepared——

Judge Alschuler: The thought I had was this: Whether in all these years with the same income, for the rate has been this since when?

Mr. Haight: 1923.

Judge Alschuler: Then the rate has been the same.

The Witness: Since 1923.

Judge Alschuler: On a substantially similar volume of business, unless there is a difference in the expense, they have been losing this large sum of money annually right along.

The Witness: Well, let us take this one firm and trace it through a period of years. As I say, I do not know offhand what the situation was, but I can tell you very readily. In the year 1931 this firm handled 173,755 head of livestock and its expenses amounted to $73,714.00. In the year 1932 that firm handled 177,252 head of livestock, slightly more than in 1931, and its expense amounted to $73,290.

Judge Alschuler: Q. Substantially the same, wasn't it?

[fol. 280] A. Substantially the same.

Judge Alschuler: Q. Then the loss would have been about the same?

A. Yes, sir.

Judge Alschuler: Q. In 1931.

A. Yes, sir.

Judge Alschuler: Q. And following all the way back, where those figures are substantially the same there would be the same loss?

A. Yes, sir.

Judge Alschuler: Q. Unless the expenses were less.

A. Yes, sir, that is correct.

Judge Alschuler: I was wondering for how many years back they had been undergoing that rate of loss. If that

is at all typical, it would be at least an extraordinary state of affairs, where there has been a comparatively certain loss for many years, that a firm would or could continue in business. Well, that is a matter of argument, perhaps.

The Witness: The receipts on the market in 1923 of all three species amounted to eighteen million four hundred and seventy-five thousand——

Judge Alschuler: You are giving us the whole now?

The Witness: The whole market."

In the case of firm No. 22 it also handled a sizeable business—146,529 head of livestock, valued at $1,709,097.74 and a loss of 18.41 per cent was experienced during that year 1932, whereas under the Secretary's rates the loss would have been 33.12 per cent. There were three owners in that particular firm. This same firm handled a slightly lower volume of business in 1933—134,011 head,—and experi- [fol. 281] enced a loss of 19.69 per cent, which would have been 34.17 per cent under the Secretary's rates. During the first four months of 1934 the loss was 18.81 per cent, and under the Secretary's rates it would have been 33.45 per cent.

In the case of firm No. 33 which handled 147,598 head of livestock during 1932 they experienced a loss of 6.60 per cent, whereas under the Secretary's rates the loss would have been 24.94 per cent. During the year 1933 this firm had a slightly increased volume of business and made a profit of 3.74 per cent, which under the Secretary's rates would have been a loss of 16.63 per cent. During the first four months of 1934 it also had an increase in volume, resulting in a further profit of 9.35 per cent, which under the Secretary's rates would have been converted into a loss of 12.12 per cent.

In the case of firm No. 37 it handled 88,036 head of live stock, and a loss of 34.58 per cent was experienced during 1932, which under the Secretary's rates would have been a loss of 48.11 per cent; and that firm has a very sizeable business which certainly warrants it being in business. The livestock it handled during the year was worth nearly $900,000. During the year 1933 that same firm handled a slightly lower volume—86,587 head, had an actual loss of 27.51 per cent, which under the Secretary's rates would have been a loss of 42.50 per cent.

"Judge Wilkerson: Do I understand that before the [fol. 282] Secretary there was any contention made as to the result of the rates as prescribed by the Secretary? They would be substantially as stated here, provided the operating expenses remained the same. The point in the Secretary's order, as I understand it, was that the operating expenses were too high, that the salaries should be cut down and that certain operating expenses should be eliminated. It is perfectly obvious that if salaries remain the same and the operating expenses remain the same that these results will follow in a general way.

Mr. Berge: There is just one added factor, your Honor, which isn't, we think, being properly stressed by Mr. Mudd, and that is the effect which the salary appraisal has in these computations. The salary appraisal——

Judge Wilkerson: I understand. They put in a salary for the owner.

Mr. Berge: Which wasn't in fact paid.

Mr. Haight: We have computations here both ways. We have covered it all.

Judge Wilkerson: I am speaking just so far as the charges and the figures are concerned. If you admit the salary appraisals and admit the expenses as they are now charged, of course there would be these losses if the Secretary's rates were put into effect.

Mr. Berge: Precisely, with the added thought that the salary appraisal is not expense. It is nothing, for it is padding.

Judge Alschuler: That is one of the questions in the case.

Mr. Haight: Yes.

Mr. Berge: I think there is no dispute over the fact that the salary——

Judge Wilkerson: It occurs to me there is no dispute about the facts here. I mean there may be in minor particulars, but essentially the result of these rates will be [fol. 283] as they claim, provided their expenses remain the same and their salaries remain the same and they are allowed to put in this salary appraisal for the owner.

Mr. Berge: As a general proposition, we concede they would have to alter their way of doing business drastically; many of them will.

Mr. Haight: The situation is very much clarified when

counsel for the Government tells us, as he has just now, that if we postulate one of the owners should get something for his services, to say nothing as profit, that is to be denominated as padding which is a very clarifying remark as to the Government's position.

Mr. Berge: Of course, that isn't my position."

Your Honor, there were two classes of expenses included in the costs which were not actually paid out. One was insurance premiums and the other was this salary appraisal adjustment. Now, in the case of insurance premiums some of the firms carried no insurance at all. Others carried part coverage. The Government in prior cases resisted the inclusion of insurance accruals, but in this case conceded that they should be included as expense, and they themselves did include them as expense, although they were not paid out. Now, the same thing exists as far as the salary appraisals are concerned. If an owner did not carry himself at any salary we must put in something that indicates his worth in order that costs are properly stated and that they are properly comparable with the commissions that he receives, and in this case 29 per cent of the owners did not carry themselves at any salary whatever. [fol. 284] The proper method of comparing costs with commissions is to include the owner's worth in the cost; but because there has throughout the hearing in this case been expressions concerning the amount of these appraisal adjustments which might indicate that they amounted to more than they do and have a greater influence than they do on the cost and on the profits or losses, in Exhibit 2, I stated the situation both ways. You will notice that in the fourth from the last column on Exhibit No. 2 I have stated the profit based on present commissions, excluding the appraisal and adjustments, and in the next column I have stated the profit based on present commissions including the appraisal adjustments. In the next column I have stated the profits based on the Secretary's rates, excluding appraisal adjustments, and in the fourth column the profits, still based on the Secretary's rates, but including salary appraisal adjustments; so that although the charts have not made all four comparisons, the full information is shown on Exhibit No. 2 in order that anyone who wants to know — the difference would have been if the appraisals had not been injected into the situation—

it is there for him to find. On the subsequent charts and graphs they are on the basis of the inclusion of salary appraisals. In weighing what effect those appraisals might have had or would have, it will be noted that excluding appraisals the profit for all firms during the year 1932 was 1.82 per cent, and including appraisals it was a loss of 9.51 per cent. Where we found that a man had not carried [fol. 285] himself at any salary we included an amount in the cost representing his salary. There were five witnesses who testified before the Secretary in respect to the fair worth, and that testimony of those five witnesses had been denominated the appraisals we have been talking about. Salary adjustments were made in the case of owners who did not carry themselves at any salary whatsoever. As to others where he simply carried himself at a nominal salary, knowing that at the end of the year he would get the profits anyhow—in other words, if I am the owner of a firm I know I am going to get all the money that comes out of that business anyhow. If I feel I can live on $100 a month, I will pay myself a salary of $100 a month, although I might not hire myself out.

The fact is that the appraisal adjustment, in addition to covering those cases where the owners did not carry themselves at any salary, also covered those cases where they were carried either at a nominal salary or at a drawing account. In some cases, these salaries were reduced under the appraisal. Where he carried himself at more than the appraisal committee considered him worth, we lowered his cost. Where he carried himself at a salary larger than the appraisal committee rated him at, his costs were correspondingly reduced.

[fol. 286] Turning now to Petitioners' Exhibit No. 7, it is entitled "Owners salaries, plus profit or less loss under present rates, as compared with owner's salaries, plus profit or less loss under Secretary's rates" for the year 1932 for the first sheet, 1933 for the second sheet and the first four months of 1934 for the third sheet. On this chart the supporting figures came from Exhibit No. 2.

The heavy line indicates the total number of dollars received by all of the owners of each firm, whether in the form of salary or profit or both. The light line indicates the total number of dollars they would have received under the Secretary's rates. The dense area indicates the effect of rate reductions.

As an example, let us take firm No. 2 for the year 1932 which is shown in sheet 1 of the chart. Under existing conditions during that year the owners of that firm received in salary and profits $9,871 as indicated by the fact that the heavy line runs up just under "10", and the "10" meaning 10,000. Under the Secretary's rates those same owners, and on the same business, would have received $3,983 as indicated by the light line. Now, that same firm for the year 1933, when it did only a slightly lesser amount of business, enabled the owners to receive in salary and profit $10,930, whereas under the Secretary's rates they would have received only $5,441. For the first four months [fol. 287] of 1934 they received $3,669, whereas under the Secretary's rates they would have received $1,766. There are three owners in that firm who under the Secretary's rates for 1932 would have received a total of $3,983.

"Judge Alschuler: Q. Three owners who devoted their entire time to the business?

A. Their entire time to the business, and all three of them would have received $3,983, an average of $1,327 for handling $1,071,076.87 worth of livestock for the producers."

In the case of firm number 4 the owners received in the form of salary and profit $54,136 during 1932. They got $28,398 salaries and they got $25,738 as profit.

During the year 1933 the owners of that firm received $38,334, whereas under the Secretary's rates they would have received $13,163. There are three owners in that firm, which means that they would receive an average of approximately $4,300 each; and that firm during 1933 handled livestock for shippers valued at $7,145,506.64.

In the case of firm No. 16, during 1932, the owners received in the form of salaries and profits or salary, less losses, $221.00. Under the Secretary's rates they would have received nothing, but have had to pay in $4,735. They [fol. 288] get actual commissions of $3923. They should have received, according to the appraisal, $11,297 more, which would have given them a total of $15,220, but this would have created a loss of $14,991, so that they would have only received $221. Whereas, under the Secretary's rates they would have received less than nothing. That is to say, they would have actually had to pay $4,735, in order

to keep the business going; and there are two owners in that business.

In the case of firm No. 19, the owners actually received during 1932 $14,713, whereas, under the Secretary's rates they would have received $4,957. There are three owners in that business and they handled livestock valued at over $2,000,000, and for their services they would have received about $1,300 each for the year's work.

In the case of firm No. 20 the owners received during the year 1932 $5,467, whereas, under the Secretary's rates they would have received nothing, but would have had to pay into the business $6,426, after having handled $31,127,000 worth of business for shippers.

Petitioner's Exhibit No. 8 comprises two sheets, the smaller of the sheets bearing in its heading the legend: "Comparison of costs of operations with actual commissions, and with commissions as per Secretary's order, [fol. 289] showing profit or loss under both. All Chicago Live Stock Exchange firms, for the year 1932." Then the second sheet bears the legend: "Relative costs (per head) selling consignments of various sizes as compared with commissions received. All Chicago Livestock Exchange firms for the year 1932."

Both the statement and the chart are intended to reflect the figures, the condition which I explained earlier this morning. That is to say, the costs that are incurred by the commission man depend not upon the mode of arrival, but on the size of the draft; that is to say, the size or number of head of livestock in each lot as they are sold.

If a shipment of twenty head of livestock has to be sold in four or five different lots, it costs a great deal more to sell than otherwise, and the different size of lots influence the cost. The rates do not recognize that situation. The costs here shown as indicated on the left side of the statement in the column showing the size of consignment and break-down of the various consignments into six different sizes; for instance, under cattle and calves we have consignments of from one to five head, from six to ten head, from eleven to fifteen head, from sixteen to twenty head, from twenty to thirty head and thirty-one head up.

In calves they are broken up in the same numbers. In

hogs and in the case of sheep, still other sizes are observed [fol. 290] because of different conditions.

In the next two columns are shown the number of head of each different sized consignment received and handled during the year 1932 and the percentage relationship of each different number of head to the total number of head. For instance, cattle received in consignments of from one to five head which totaled 113,719 head, represented 5.51 per cent of all cattle received.

In the next two columns we have the cost of handling each different sized consignment which has also been shown on a per head basis. Under the general heading of commissions we have the actual commissions which were received for each different size—for the livestock received in each different sized consignment, and also reduced to a per head basis. And we have the commissions which would have been received for that same livestock under the Secretary's order.

And the increase or decrease in commissions applying to each different sized consignment as compared with the Secretary's rates.

Then in the last group of columns headed, "Profit or Loss" we have the total profit per head and the per cent of profit or loss under the actual conditions, or the present rates, as compared with conditions which would have prevailed under the Secretary's ordered rates.

[fol. 291] Now, here we have in the fourth figure column actual costs per head. The facts supporting statements made earlier in the day that it costs a great deal more per head to handle a small consignment or bunch of livestock than it does a large consignment or bunch of livestock. For instance, if a consignment consists of from one to five head the average cost per head is $1.30—$1.3075. That is cattle only. For handling a head of cattle in a consignment of thirty-one or more, the cost is only $.7818 per head, so there is a very considerable difference between the cost of handling small and large consignments. But that difference is not recognized to nearly as great an extent as it exists in the Secretary's rates. For example, while we have a cost of $1.30 in handling one head of cattle, in consignments of from one to five head, the Secretary's rates only allow 70.69 cents in commissions. And in the larger consign-

ments, where the cost is 78.18 cents per head, we are only allowed 53.13 cents under the Secretary's rates.

So that not only does the commission man, or would the commission man experience a severe loss on both sizes of consignments, or on all sizes of consignments as indicated by this exhibit, but the large shipper would be called upon to pay part of the cost of handling the small shipper's live-stock, under the Secretary's rates as they are constructed. [fol. 292] The rate prescribed in the Secretary's order does recognize and does cause a shipper to pay more per head if he ships a small shipment, than if he would ship in a large one; but he does not recognize the trend as actually exists in costs.

In other words, it does not make the small shipper pay enough more than the large shipper per head to compensate for the cost actually incurred, or the cost difference actually existing. In other words, it costs—in the case of cattle, approximately 52 cents more per head to handle a head arriving in consignments of from one to five head, than if it arrived in a consignment of more than thirty head. But in the Secretary's rates, instead of the difference being 52 cents, it is only 17 cents. The average rate for consignments of over thirty head is 53.13 cents per head. And the point I made in that connection was that the rates under the Secretary's order do not start high enough and do not go down far enough.

"Mr. Berge: In other words, they are based not entirely upon the cost of rendering the service?

The Witness: They are entirely out of line with the trend of costs as between small and large consignments.

Mr. Berge: Didn't you say it took in the trend, but did not recognize the trend enough. I understood you to say the old rate schedule makes no distinction, whereas the Secretary has recognized the trend, but does not go far enough. Isn't that in substance your position?

[fol. 293] The Witness: Yes, the Secretary has attempted to meet that situation but having no studies of the actual conditions, he has been unable to meet it properly.

Mr. Berge: That is, in your judgment he has not done enough to meet it, to remedy the defect in the old schedule?

The Witness: He has not recognized the entire cost of handling the small consignments.

Mr. Berge:

Q. What do you think that the difference in rate as to size of consignment is based on, if not on differing costs?

A. That is something that I would like to know, knowing that the Secretary did not have such costs; I would like to know how he got at such a rate.

Mr. Berge: You think there is nothing in the record showing this cost of handling different sized consignments?

A. I know there is not."

Under the present rates there are differentials between the various modes of arrival. Under the new Secretary's rates, there is no such differential. And under the present rates, the 1923 rates, there are differences on account of plural ownerships. And on account of the mixed car.

When I say there is nothing in this record on the subject of diminishing costs for increased volume, I mean in the form of cost statistics.

I believe there have been some statements made by witnesses, who are perhaps salesmen, or Yard men, who can guess at those things, but I am referring to information of [fol. 294] an accurate and reliable character, based on facts.

Now, it will be seen by following, for instance, the classification "Cattle", which is the first classification under the heading on this sheet, that because the Secretary's rates do not recognize the proper trend between the cost of handling small consignments and large consignments, that the loss on cattle and calves, for instance, in shipments of one to five head under the Secretary's rates, would be 45.94 per cent, while for the larger consignment of over thirty head, the loss would only be 32.04 per cent, which indicates definitely that the large shipper would be paying part of the small shipper's costs under the Secretary's rates. That is true of calves and also of hogs.

Now, the chart which is attached shows the same information in graphic form. I will give one illustration and then dismiss it.

In the first column, under the heading "Cattle 1 to 5 head" you will note that the green line indicating the respondents' actual costs reflects the cost as previously mentioned which is about $1.30. Whereas, the actual commissions are shown by the solid red line which runs slightly under the 89 cent mark, the actual amount being 88.16

cents. The dotted red line, which you will find just above the 71 line, or about the 71 line, indicates the commissions per head under the Secretary's rate; the exact amount being 70.69 cents.

[fol. 295] The total green line, which will be found just above the 46. line represents the Secretary's so-called reasonable cost.

Now, the Secretary's order on the cost of cattle and calves combined is shown as 42.97 cents.

In this Exhibit 8 I have dealt with cattle and calves separately, and in dividing the expense between cattle and calves I have used the relative rates prescribed by the Secretary. Therefore, the cattle cost shows to be slightly over 46 cents, and the calves cost to be slightly over 21 cents per head.

Petitioners' Exhibit 9 is made up of schedules 1-A, 1-B, 1-C and 1-D. It has the drawing of a man upon the first sheet. It comprises four sheets and is entitled, "The cattle salesman employed under present commission rates as compared with the cattle salesman, and who will have to be employed under the Secretary's ordered rates."

The second sheet of the schedule 1-B is the same, except that it refers to hog salesmen, and the next sheet, schedule 1-C is the same, except that it refers to sheep salesmen, and sheet No. 4 which is 1-D which is entitled, "Comparison of the actual salesmen as employed by the petitioners, with the reduction in salesmen who will have to be employed under the Secretary's orders."

[fol. 296] Under the Secretary's order, the costs are subdivided according to functions; one being a function of supervision, another selling, another business getting, another buying, et cetera, corresponding to the titles in the various columns on this exhibit.

The petitioners have certain costs for each of these functions and the Secretary's order has named certain reasonable costs for the same functions under each of the three species.

I have shown the petitioners' cost per head for each of these functions. Supervision, for instance, being 2.98 cents. Selling being 40.24 cents, et cetera.

On the next line opposite the title "Secretary's reasonable costs per head, Order of January 8, 1934," I have shown the costs as indicated by the Secretary on Page 110

of that order. Which are, for instance, in the case of supervision 1.51 cents; in the case of selling 16.67 cents, et cet-ra.

On the third line I have shown the percent of the Secretary's reasonable cost to the petitioners' actual cost. Which, for instance, in the case of supervision shows that the Secretary's reasonable cost amounts to only 50.34 cents [fol. 297] of the actual cost. And in case of selling it amounts to only 41.43 cents of the actual cost.

Then on the fourth line, I have shown the distribution by functions of the salaries of all salesmen, which distributions were based on distributions of time of the individual salesman during the year 1932. In other words, there is in this record so-called questionnarie forms by which I mean labor distribution forms, on which the percentage distribution of each owner and each employe's time under the functions, is shown, indicating the manner in which each of them spent their time during the year 1932. And this distribution of salary, insofar as the salesmen only are concerned, has been shown opposite this fourth item. On the fifth line opposite functional percents, service rendered by salesmen. I show the per cent of time the salesman spent in each different class of service. For instance, they spent 1.97 per cent of their time in supervision; they spent 75.21 per cent of their time in selling; they spent 13.25 per cent of their time in business getting; 1.65 per cent of their time in buying; 1.89 per cent of their time in yarding; 1.29 per cent of their time in office work and 4.74 per cent in other business, such as the loan business, the operation of the feed yards and operating farms, et cetera.

Now the sum total of all of those per cents gives a one hundred per cent salesman, which I have shown in the first column headed "Total". On the next line, and opposite [fol. 298] "functional per cents, Salesman after reduced by the Secretary", I have applied to that portion of the salesman which represents supervision, the percentage of our actual costs which he allows for supervision, with the result that the new salesman under the Secretary's rates can only spend .99 per cent of his time in supervision; or, at least the commission man can only pay him .99 per cent of the salary, instead of 1.97 per cent for that function.

Now, in the case of selling, where the salesman now spends 75.21 per cent of his time, that cost has been cut down by the Secretary to 41.43 per cent, leaving only 31.16 per cent of the salesman which can be devoted to selling.

And in the case of business getting, whereas, he actually did spend 13.25 per cent of his time in the country making appraisals, soliciting and giving advice on livestock, et cetera, the Secretary has cut that down to 27.08 per cent of the actual cost, so that the new salesman can only spend 3.59 per cent of his time in business getting, instead of 13.25 per cent; or the commission man has the alternative of cutting his salary accordingly, and making him spend the same amount of time in the activities.

And the same applies throughout and the new percentages as summed up show that instead of having a one hun-
[fol. 299] dred per cent salesman, we will only have in the case of cattle and calves a 44.85 per cent salesman.

Now, in the case of hogs the same procedure develops a new salesman who is only 53.37 per cent of what he is now, that is under the Secretary's rates, and in the case of sheep salesmen we will only have a 50.07 per cent salesman left under the Secretary's rates.

Now, on sheet 1 of the chart, or sheet 1-A of the Exhibit 9, I have illustrated by use of a one hundred per cent scale, which is shown in the middle of the sheet, how the present salesman on the lefthand side compares with the buyer of today. They are both one hundred per cent men. The salesman is equal to the buyer. And on the righthand side I have shown how the new 44.85 per cent salesman will compare with the buyer under the Secretary's prescribed rates.

"Judge Alschuler: You are assuming equality under present rates?

The Witness: On the lefthand side under present rates he is a one hundred per cent man. That is the scale that we are measuring by and under the new rates on the righthand side he is only a 44.85 per cent salesman.

Judge Alschuler: I understand these losses can be shown. I would think they would be reflected at present in the reduction of the salesmen's force.

The Witness: It is, your Honor; salesmen are being taken away from commission firms and they are employed by buyers.

[fol. 300] "Mr. Berge: Could Mr. Mudd explain to us why it is that the salesman in the righthand side of the picture is cut to 45 per cent, when the rates, according to his Exhibit 1, are cut 20 per cent? Is he not comparing commis-

sions on the one side with costs on the other? Are the two things comparable?

The Witness: That is the point that these charts were intended to make. That while the cut apparently is only 21 per cent, the cost of the salesman would be cut over 50 per cent."

We have developed the 44.85 per cent salesman on the basis of the Secretary's order, on figures he has given on page 110 of the order, in comparison with the actual costs which are now spent for the salesman. The only way you can tell the difference between the actual cost and the Secretary's cost is by comparing them. Salesmanship is the largest factor in this business, and it is the point at which the Secretary has made the largest cut, applying the largest percentage to the largest portion of the man you get the largest reduction.

Mr. Berge:

"Q. If salesmanship is the largest factor in the business, how is it that it is cut 55 per cent when your average of everything is only 20 per cent?

A. You understand, that we are dealing here with the salesman, and the salesman only, and the salaries that are dealt with here are the salesmen's salaries only.

Q. But, you said that the salesmen's salaries are the largest factor in the business and that they would have to be cut 55 per cent, notwithstanding that the rates are only cut 20 per cent.

A. That is quite true, and is brought out in these figures. He is cutting the selling costs, as shown in the order, from 100 per cent down to 41.43 per cent.

[fol. 301] Q. What becomes of the 35 per cent, the difference between the 20 per cent that the rates are sliced, and the 55 per cent that the salesman's salary would have to be sliced, if those other factors are relatively minor cost factors?

A. If you have a 100 per cent cost and 20 per cent of it is not cut by the Secretary, and the other 80 per cent is cut, the effect on the 80 per cent is naturally more than it would be on the 100 per cent in percentages.

In other words, here is a salesman who spends 75 per cent of his time selling, and the Secretary, instead of allow-

ing 40 cents for selling, has only allowed 16 cents, therefore the selling activitiy of that man, or the salary representing that selling activity will have to be cut from 40 cents down to 16 cents, in order to get under the Secretary's reasonable cost. That means that he is cut more than—cut nearly 60 per cent.

Now, if he devotes 75 per cent, or three-quarters of his time to selling, and that activity, or the compensation for that activity is cut down nearly 60 per cent, it is quite clear he will only have 31 per cent left. And that is exactly what this statement shows, and when you do that with each of the functions as mentioned by the Secretary, the sum total that is left in that salesman is 44.85 per cent. Therefore, it indicates what it was intended to indicate, that this reduction in commissions strikes at the most vital part of this business, the salesman, and leaves the other things, with the exception of business getting, practically untouched."

Referring to Petitioners' Exhibit 10, under the first four figure columns, I have shown the number of cars of each of the different species and of all the species handled by each firm. In order to indicate the relative size of the firm's business in the next group are columns under actual results. It is cars in the case of rail shipments, plus car equivalents in the case of drive-ins. Under the next group [fol. 302] of columns headed, "Actual Results" I have shown the cost, commission, amount of profit and loss and the percent of profit or loss. The figures, in all eight of these first columns were taken from the records in this case.

Then, in order to indicate the effect on costs and on rates, I have eliminated the small firms, because it has been indicated that the small firms might be responsible for high rates, because they were too small to operate efficiently, and would therefore have to have higher rates in order to pay their way. In order to show that the elimination of these small firms would have but very little effect on the cost or rates, I have eliminated in the fourth column from the right, or shown, rather, in this column the commissions of all firms doing business of less than 200 cars of livestock per year, unless it happens that one of those small car firms handled more than 100 cars of cattle, because clearly 100 cars of cattle would support a commission man.

After eliminating those commissions from the small firms

they were added to the remaining firms in proportion to the business those remaining firms handled.

And in the third column from the right I have shown the increased commissions which these remaining large firms would have received had they had a share of the small firms' business.

[fol. 303] And in the second column from the right I have shown the new profit and loss amount, which the large firms would have received, had they been given that business, without considering that it would have cost them another dollar to have handled that business, which, of course, is obviously not true, because they could not have handled that amount of business without spending some money. But, in order to make the illustration extremely favorable to the contention that the eliminating of these small firms would effect the cost and rates materially, I have considered that this business could have been handled by the larger firms without any additional expense whatsoever.

The last column then shows the revised percentage of profit and loss as would have been experienced by these remaining large firms had they handled this additional business of the small firms, without cost, and with the final result as illustrated by the last item, "All firms", that the loss which was actually experienced in 1932 of 9.51 per cent would have been only slightly changed to a loss of 7.99 per cent; so that it clearly indicates that even though all of these small firms were eliminated, the condition would not be materially changed.

[fol. 304] Petitioners' Exhibit No. 11 is entitled "The Secretary's Reasonable Cost per Carlot as compared with the petitioners' median rate average and bulk line cost per car lot, all Chicago Livestock Exchange firms for the year 1932." The information or figures in the first column headed "Secretary's reasonable cost per car", is the result of taking the average number of head per car for each class of business and multiplying it by the Secretary's reasonable cost per head. In other words, in the case of straight car single ownership of cattle and calves there were an average of 26.56 head per car. This, when multiplied, by the Secretary's cost per head for cattle and calves which is 42.97 produces a cost per car of $11.41, shown in the first column on this exhibit under "Cattle and calves," opposite straight car single ownership.

Now, with respect to each other class of business under each of the three species, such as straight cars plural ownership, the rate was applied to the average number of head per car of that class of business. And so likewise with the mixed car single ownership, mixed car plural ownerships and drive-ins. In that way I arrived at the Secretary's reasonable cost per car.

In the second figure, the column which is headed, "Petitioners median cost per car," the costs were arrived at by [fol. 305] listing the unit cost of all firms for each class of business and selecting the middle or median cost.

In the next column, headed "Petitioners weighted average cost per car", the amounts were taken from respondent's cost study, of record in this case.

Under the next column, headed "Petitioners 66⅔ per cent bulk line cost per car", the amounts were determined by listing the volume and the unit cost for each of the firms, showing the highest unit cost on top and the lowest unit cost on the bottom and then determining bulk line costs by starting at the bottom and drawing a line at each bulk line as, for instance, a 10 per cent bulk line would be drawn at the point where 10 per cent of the volume is included, taking it from the bottom up.

And so on up until you get to 66⅔ per cent and draw your line over to the cost at that volume and we have the figure for the 66⅔ per cent bulk line.

The figures for all of these columns, that is the basis known as the medium, weighted average and the 66⅔ bulk line are in the records.

One very significant thing about this showing is the fact that, although as I explained this morning it — more to handle drive-ins, for example, than any other class of business, except possibly certain mixed plurals where many owners are involved, nevertheless that showing indicates, [fol. 306] for instance, in the case of cattle that the reasonable cost as allowed by the Secretary is only $12.42 per car as compared with the cost of $17.64 for mixed singles. In other words, his cost produced a lower amount for drive-ins than the other class of business, although it is well known that drive-ins cost considerably more to handle than the other class.

"Judge Alschuler: Do you mean that the Secretary's cost is lower for drive-ins than the Secretary's cost for the other, whatever it is?

A. Yes, sir, that is true, and the same is true in the case of hogs and also in the case of sheep. The Secretary's cost for drive-ins is less than other class of business, where it is a well known fact that the cost is much higher for drive-ins than those other classes."

Now, a similar situation exists with respect to other classes of business. The Secretary's costs show that a straight car plural ownership should be handled for less than a straight car single ownership, because, if you will note here under "hogs", the reasonable cost shows $11.99 for straight car single ownership, whereas it only shows $11.33 for straight car plural ownerships, which again is just the reverse of the actual conditions.

The same thing is true under "hogs", in comparison between mixed car singles and mixed car plurals. The Secretary shows a cost of $11.83 for mixed car plurals, whereas for mixed car singles, which are cheaper to handle he shows a larger cost or $12.42. He shows that mixed car plural [fol. 307] ownership hogs should be handled cheaper than straight car single ownership hogs. He shows that drive-in hogs should be handled cheaper than the easiest class of business to handle, straight car single ownership.

In the case of sheep the Secretary shows that the easiest class of business to handle, straight car single ownership should cost $11.15, while drive-ins, the most expensive class of business to handle should only cost $9.54. He shows that mixed car plural ownership should cost less than mixed car single ownership, which is just the reverse of what the actual conditions are, and he shows that straight car plural ownership should cost less than straight car single ownerships, which is again just the reverse of the actual conditions.

The Secretary shows that mixed car single ownership should cost less than straight car single ownership, which is still just the reverse of the existing conditions, and that mixed car plural ownerships of sheep should cost more than straight cars plural ownership, which is the reverse of the actual condition.

Now, his costs as shown in the first column are in many cases half, or less than half of the cost developed under

the three well known methods of figuring costs, and in some cases it is only one-fourth of the cost, produced by one or more of these well known methods.

[fol. 308] For instance, in the case of drive-in sheep he shows a cost of $9.54, whereas on the basis of the 66⅔ bulk line cost it should be $37.02.

Now, under the 66⅔ bulk line cost the assumption is drawn that the other 33⅓ per cent of the business is handled inefficiently, so that by even granting that one-third of the business is handled inefficiently, the cost of handling the balance of the business is more than four times that allowed by the Secretary.

I could go on and cite every one of these items and make similar statements, because the comparisons that I have already cited hold good throughout the statement and anything else that I might say would be in the nature of a repetition.

Again, referring to the first item under "Cattle and calves straight car single ownership", it will be noticed in next to the last column that only three out of the 95 firms handling that class of business during the year 1932 had a cost as low as that prescribed by the Secretary and only 130 out of 46,016 cars were handled at a cost as low as the Secretary's reasonable cost.

In the next item, straight cars plural ownership it shows that only three out of the 93 firms operated at a cost [fol. 309] as low as the Secretary's reasonable cost and that they only handled 16 out of a total of 13,008 cars cheaper than the Secretary's reasonable cost.

In the case of mixed cars single ownership there were 8 out of 93 firms only that were able to handle the cars,—a car as cheap as the Secretary's cost would call for. And there were only 96 out of over 2,000 of those cars that were handled cheaper than the Secretary's reasonable cost.

In the case of mixed car plural ownership there was only one out of 94 firms that was able to meet the Secretary's cost and there were only nine out of 3289 cars that were handled as low as his reasonable cost.

In the case of drive-ins there were none who reached the Secretary's cost.

During the year 1932, Exhibit No. 2 shows that under present rates 86 out of 101 firms operated at a loss, while under the Secretary's rates 100 out of 101 would have operated at a loss.

Under the present rates the average loss for all firms during 1932 was 9.51 per cent, while under the Secretary's rate the loss would have been 28.30 per cent.

For the year 1933, under the present rates, 60 out of 87 firms operated at a loss, while under the Secretary's [fol. 310] rates 84 out of 87 would have operated at a loss.

Under the present rates the average loss for all firms during 1933 was 2.36 per cent, while under the Secretary's rates the loss would have been 22.65 per cent.

For the first four months of 1934 under the present rates 44 out of 73 firms operated at a loss, while under the Secretary's rates 72 out of 73 would have operated at a loss.

Under the present rates the average loss of all firms during the first four months of 1934 was 1.12 per cent, while under the Secretary's rates the loss would have been 21.66 per cent.

The fact that there were a smaller number of firms operating at a loss during the first four months of 1934 is apparently due to the drought and other conditions of that sort, which drove livestock into the market prematurely. It is not a fact that that increased volume was coming into the market before the drought conditions were apparent. The volume in 1933 was less than in 1932. I have not made the comparison month by month. I do know that the Secretary's pig program has increased the volume of the pig business very materially and that would have a tendency to make the result as I have indicated. I have the volume for the four months here. The thing that I haven't got [fol. 311] is each month separately. I attribute the fact that less firms have been showing a loss this year to the temporary increase in the volume, because whatever is received in the way of increased volume, for instance, from the Secretary's pig program will mean severe losses later on to the commission men.

"Mr. Haight: I offer in evidence at this point as plaintiffs' Exhibit 12 the government publication by the Secretary of Agriculture entitled, 'Emergency Hog Market Program'."

"Mr. Berge: The witness testified that there has been a decrease in the firms showing a loss and I want his simple answer as to why that is, if it is due to anything else than a change in volume, we would like to know.

Mr. Haight: Do you know the answer, Mr. Mudd?

A. I have no doubt but what an increased volume would slightly reduce the unit cost, as it does in every business. But under conditions that have existed on this market recently, when this unusual volume has been received as under the Secretary's hog program, additional expenses have been avoided by night work and the commission men and their employees have been taxed to their utmost to handle that business and meet their existing loss condition.

Judge Alschuler: Existing expense?

A. Existing loss condition. They are losing money now.

Judge Alschuler: Of course, if they handle it with the same business, without additional pay and additional service cost, it isn't costing them any more to do it, but the evidence is it has increased. They received more for it. They are paid by the car.

The Witness: A. That is true. The only way they have avoided additional expense, knowing it was a temporary [fol. 312] condition, they have worked nights and exerted every other means of that nature, whereas, if it had been a normal tendency toward an increased volume that was going to go on more or less permanently, they would have had to incur additional expenses in a permanent fashion, whereas they met the situation as an emergency."

The fire that occurred on the 19th of May in the Union Stockyards, at which time the Exchange Building in which all of the plaintiffs here are located in respect to offices, was destroyed, and their records or most of them, the fire extending beyond the Exchange Building. It destroyed a very large part of the stock pens. Since then business has been done at the Stockyards under very congested conditions in the remaining pens. The commission men have been able to perform their functions under very, very difficult conditions during normal hours and by working additional hours.

They have little wooden shacks for offices that have been put up in rows of ten or fifteen, very hurriedly, to be constructed out of boards in a day or two to meet the emergency. During the time I had contact with the officers and the books and records of the various plaintiffs' concerns here, I learned that they kept over the years their customers' lists. No, the customers' names were not in the general books that were saved; the customers' records were

separated, so far as I know. They were all destroyed. As a matter of fact, some of the commission men asked me to loan them copies of their impounded records submitted to [fol. 313] this court, so that they could gather up the names of what few customers were available on that list.

"Q. You were speaking this forenoon of the present rates, that is the 1923 rates. And I want to ask you a leading question, in order to save time: Did I understand you to mean, in criticizing the present tariff that it does not provide sufficient revenue to meet the operating conditions of these respective businesses?

A. Yes, sir, that is exactly what I meant. It does not provide sufficient revenue and I think that is clearly indicated in Exhibit No. 2."

Petitioners Exhibits 1 to 12 both inclusive offered and received in evidence.

Mr. Berge objected on the grounds first stated.

No cross-examination.

Mr. Haight: I would now like to offer in evidence as one exhibit the record before the Secretary. For convenience, we may call it Plaintiffs' Exhibit 13. It is the large amount of material which the government has kindly brought into the courtroom and consists of over forty volumes of transcript and a great number of exhibits, all of which have heretofore been identified on the record before the Secretary.

[fol. 314] Judge Alschuler: The transcript will be received, transcript offered into evidence will be received into evidence and it will be up to you gentlemen to make the most convenient use of it.

Plaintiff rested.

[fol. 315] STIPULATION RE NARRATIVE STATEMENT OF EVIDENCE

The parties hereto stipulate and agreed that the foregoing Narrative Statement of Evidence is true, properly prepared, and contains all of the testimony taken before the Court material to the hearing of the appeal; and the

defendant-appellees waive notice of the lodgment thereof, and notice of the time of the proposed settlement thereof.

Geo. I. Haight, Counsel for Appellants. Wendell Berge, Counsel for Appellees.

[fol. 316] IN UNITED STATES DISTRICT COURT

ORDER SETTLING STATEMENT OF EVIDENCE

It appearing that notice of the lodgment of the within and foregoing Narrative Statement of Evidence has been waived by the appellees and that notice of the time of the proposed settlement thereof has been likewise waived;

And it further appearing that said Statement of Evidence is true, properly prepared and contains all of the testimony taken before the Court material to the hearing of the appeal;

And it further appearing that the portions of said statement of Evidence appearing in the exact words of the witnesses is necessary in order that the sense and understanding thereof may be determined:

It is therefore ordered that said Statement of Evidence be settled, approved, and allowed as a true, complete and correct statement of all the evidence taken before the Court in said cause material to the hearing of the appeal and that the same be filed with the Clerk of this Court and become part of the record on appeal.

Dated at Chicago, Illinois, this 17th day of December, 1935.

Samuel Alschuler, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fol. 317] IN UNITED STATES DISTRICT COURT

[Title omitted]

Plaintiffs' Exhibits—Filed Jan. 31, 1935

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

VOLUME OF LIVESTOCK HANDLED BY PETITIONERS DURING THE FOUR MONTHS
(Except in instances where records were destroyed in the
SHOWING THE COMMISSIONS UNDER SECRETARY'S RATES AS COMPARED WITH

NAME OF FIRM	SERVICE	ANALYSIS OF CONSIGNMENTS AND SECRETARY'S COMMISSIONS													
		CATTLE						CALVES		SWINE				SHEEP	
		LIGHT		MEDIUM		HEAVY				PIGS		HOGS			
		HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS
ADAMS, CORRICK & HATCH	SELLING	816	448.50	2 540	1 573.40	1 046	750.20	512	184.60	219	30.90	14 505	3 195.15	1 260	106.31
	BUYING														
	TOTAL														
ALEXANDER CONOVER & CO.	SELLING	8 344	4 220.96	25 021	14 641.41	9 559	6 658.65	1 469	478.50	474	66.60	27 026	5 445.90	79 603	5 717.09
	BUYING														
	TOTAL														
ADLER SONS & COMPANY	SELLING	(INCLUDED IN SWANSON, GILMORE & CASTENHOLTZ)													
	BUYING														
	TOTAL														
LOUIS ARMBRECHT COM. CO.	SELLING	26	14.30	172	105.50	185	129.95	24	6.90	-	-	705	118.40	-	-
	BUYING														
	TOTAL														
BAKER, HEYNE & COMPANY	SELLING	1 142	635.50	2 731	1 753.95	1 440	1 048.05	1 648	555.55	664	100.65	22 220	4 785.25	300	60.70
	BUYING														
	TOTAL														
C. H. ACKER & COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
BARTON, LOONEY & COMPANY	SELLING	1 438	746.20	2 479	1 596.05	646	442.50	776	251.40	83	12.45	2 949	678.80	89	23.15
	BUYING														
	TOTAL														
BENTON & COMPANY	SELLING	335	199.40	956	664.15	129	111.25	2 221	745.65	1 384	205.20	14 785	3 413.85	169	42.15
	BUYING														
	TOTAL														
BOWLES L. S. COM. COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
GEO. M. BROWNSON & COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
ABE BURNETT & COMPANY	SELLING	414	231.50	1 038	651.55	518	359.00	258	84.40	124	16.70	3 017	667.05	1 297	104.91
	BUYING														
	TOTAL														
CALLAHAN L. S. COM. COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
	SELLING														

	TOTAL																
ALEXANDER CONOVER & CO.	SELLING BUYING TOTAL	8 344	4 220.96	25 021	14 641.41	9 559	6 658.65	1 469	478.50	474	66.60	27 026	5 445.90	79 603	5 717.		
ADLER SONS & COMPANY	SELLING BUYING TOTAL	(INCLUDED IN SWANSON, GILMORE & CASTENHOLTZ)															
LOUIS ARMBRECHT COM. CO.	SELLING BUYING TOTAL	26	14.30	172	105.50	185	129.95	24	6.90	-	-	705	118.40	-	-		
BAKER, HEYNE & COMPANY	SELLING BUYING TOTAL	1 142	635.50	2 731	1 753.95	1 440	1 048.05	1 648	555.55	664	100.65	22 220	4 785.25	300	60.70		
C. H. ACKER & COMPANY	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)															
BARTON, LOONEY & COMPANY	SELLING BUYING TOTAL	1 438	746.20	2 479	1 596.05	646	442.50	776	251.40	83	12.45	2 949	678.80	89	23.15		
BENTON & COMPANY	SELLING BUYING TOTAL	335	199.40	956	664.15	129	111.25	2 221	745.65	1 384	205.20	14 785	3 413.85	169	42.15		
BOWLES L. S. COM. COMPANY	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)															
GEO. M. BROWNSON & COMPANY	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)															
ABE BURNETT & COMPANY	SELLING BUYING TOTAL	414	231.50	1 038	651.55	518	359.00	258	84.40	184	16.70	3 017	667.05	1 297	104.93		
CALLAHAN L. S. COM. COMPANY	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)															
HARRY L. CARPENTER	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)															
CENTRAL L. S. COM. COMPANY	SELLING BUYING TOTAL	1 131	612.75	2 975	1 864.80	898	655.65	1 506	447.60	24	3.60	9 162	1 954.28	400	49.67		
CLARK BOWLES & COMPANY	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)															
JOHN CLAY & COMPANY	SELLING BUYING TOTAL	8 069	4 001.91	25 879	15 220.56	14 527	9 600.70	1 506	423.90	319	46.50	26 649	5 080.85	205 225	14 408.73		

HE DISTRICT COURT OF THE UNITED STATES
ORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

Petitioners' Exhibit No. 1
Witness, Earle D. Mudd.

ANDLED BY PETITIONERS DURING THE FOUR MONTHS ENDED APRIL 30, 1934
stances where records were destroyed in the recent fire)
S UNDER SECRETARY'S RATES AS COMPARED WITH THE PRESENT COMMISSIONS

Sheet 1 of 7

SCHEDULE NO. 2

AND SECRETARY'S COMMISSIONS									PRESENT COMMISSIONS				DIFFERENCE			
SWINE				SHEEP		EXTRA CHARGES		TOTAL	REGULAR COMMS	EXTRA CHARGES		TOTAL	PRESENT OVER SECY.	PRESENT UNDER SECY.	NET REDUCTION	PERCENT OF REDUCTION
PIGS		HOGS				FOR DRAFTS	CHECKS & A/S			FOR DRAFTS	PRORATING & A/S					
HEAD	COMMS	HEAD	COMMS	HEAD	COMMS											
219	30.90	14 505	3 195.15	1 260	106.51	45.10	23.35	6 357.71	8 157.83	52.40	67.10	8 277.33	1 967.04	47.42		
								48.00				48.00				
								6 405.71				8 325.33			1 919.62	23.06
474	66.60	27 026	5 445.90	79 603	5 717.09	316.90	10.25	37 556.26	46 709.88	242.95	273.88	47 226.71	9 802.01	131.56		
								913.40				913.40				
								38 469.66				48 140.11			9 670.45	20.09
-	-	705	118.40	-	-	4.05	.45	379.55	512.10	3.60	4.10	519.80	140.91	.66		
								NONE				NONE				
								379.55				519.80			140.25	26.98
664	100.65	22 220	4 785.25	300	60.70	50.55	13.35	9 003.55	10 098.39	163.80	411.89	10 674.08	1 912.55	242.02		
								15.00				15.00				
								9 018.55				10 689.08			1 670.53	15.63
83	12.45	2 949	678.80	89	23.15	59.60	.20	3 810.35	4 909.16	47.35	6.15	4 962.66	1 162.03	9.72		
								NONE				NONE				
								3 810.35				4 962.66			1 152.31	23.22
1 384	205.20	14 785	3 413.85	169	42.15	19.65	-	5 401.30	6 783.71	1.80	63.47	6 848.98	1 498.28	50.60		
								NONE				NONE				
								5 401.30				6 848.98			1 447.68	21.14
184	16.70	3 017	667.05	1 297	104.93	26.55	.95	2 142.63	2 781.85	19.65	31.05	2 832.55	697.90	7.98		
								NONE				NONE				
								2 142.63				2 832.55			689.92	24.36

									6 405.71				8 325.33			1 919.62	23.06
30	474	66.60	27 026	5 445.90	79 603	5 717.09	316.90	10.25	37 556.26	46 709.88	242.95	273.88	47 226.71	9 802.01	131.56		
									913.40				913.40				
									38 469.66				48 140.11			9 670.45	20.09
20	–	–	705	118.40	–	–	4.05	.45	379.55	512.10	3.60	4.10	519.80	140.91	.66		
									NONE				NONE				
									379.55				519.80			140.25	26.98
35	664	100.65	22 220	4 785.25	300	60.70	50.55	13.35	9 003.55	10 098.39	163.80	411.89	10 674.08	1 912.55	242.02		
									15.00				15.00				
									9 018.55				10 689.08			1 670.53	15.63
10	83	12.45	2 949	678.80	89	23.15	59.60	.20	3 810.35	4 909.16	47.35	6.15	4 962.66	1 162.03	9.72		
									NONE				NONE				
									3 810.35				4 962.66			1 152.31	23.22
55	1 384	205.20	14 785	3 413.85	169	42.15	19.65	–	5 401.30	6 783.71	1.80	63.47	6 848.98	1 498.28	50.60		
									NONE				NONE				
									5 401.30				6 848.98			1 447.68	21.14
10	124	16.70	3 017	667.05	1 297	104.93	26.55	.95	2 142.63	2 781.85	19.65	31.05	2 832.55	697.90	7.98		
									NONE				NONE				
									2 142.63				2 832.55			689.92	24.36
0	24	3.60	9 162	1 954.28	400	49.67	95.25	3.65	5 687.25	6 368.82	127.75	228.10	6 724.67	1 137.82	100.40		
									1.50				1.50				
									5 688.75				6 726.17			1 037.42	15.42
0	319	46.50	26 649	5 080.85	205 225	14 408.73	415.10	111.60	49 309.85	63 639.05	169.05	111.92	63 920.02	4 862.42	252.25		
									189.50				189.50				
									49 499.35				64 109.52			4 610.17	22.79

VOLUME OF LIVESTOCK HANDLED BY PETITIONERS DURING THE FOUR MONTH
(Except in instances where records were destroyed in
SHOWING THE COMMISSIONS UNDER SECRETARY'S RATES AS COMPARED WITH

NAME OF FIRM	SERVICE	ANALYSIS OF CONSIGNMENTS AND SECRETARY'S COMMISSIONS													
		CATTLE						CALVES		SWINE				SHEEP	
		LIGHT		MEDIUM		HEAVY				PIGS		HOGS			
		HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS
CONKLIN BROS. COM. COMPANY	SELLING	3 265	1 745.20	7 357	4 626.80	4 131	2 974.40	1 556	538.30	635	99.25	31 816	6 795.55	530	84.80
	BUYING														
	TOTAL														
COCHRAN, HENNEBERRY & WALLACE	SELLING	2 169	1 360.75	5 369	3 372.70	1 693	1 239.40	1 586	509.65	154	19.55	27 919	5 900.00	944	116.70
	BUYING														
	TOTAL														
H. D. COPELAND & COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
W. DANIEL	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
DOLAN, LUDEMAN & COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
DROVERS COM. COMPANY	SELLING	4 698	2 475.15	13 357	7 316.35	4 037	2 760.90	5 899	1 709.00	49	7.35	19 963	3 414.33	896	125.03
	BUYING														
	TOTAL														
DUNBAR, ST. JOHN & COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
H. L. DUNNING & CO.	SELLING	1 945	982.25	2 378	1 484.35	529	387.10	582	172.20	98	13.28	7 846	1 497.65	162	19.19
	BUYING														
	TOTAL														
ETTLINGER L. S. COM. CO.	SELLING	252	140.75	1 233	755.10	193	144.30	247	78.30	6	.90	7 094	1 326.25	131	25.95
	BUYING														
	TOTAL														
EVANS, SNIDER, BUEL COMPANY	SELLING	1 143	631.85	2 474	1 548.55	599	447.85	1 036	366.10	1 130	167.10	16 077	3 673.20	3 420	421.51
	BUYING														
	TOTAL														
FILLER, WILSON, MCCLELLAND	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
W. GENTLEMAN & SONS	SELLING	4 512	2 418.55	10 513	6 536.05	3 552	2 514.25	1 858	554.45	967	144.00	21 879	4 665.78	322	73.68
	BUYING														
	TOTAL														
I. O. FRY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														

COCHRAN, HENNEBERRY & WALLACE	SELLING	2 169	1 360.75	5 369	3 372.70	1 693	1 239.40	1 586	509.65	154	19.55	27 919	5 900.00	944	116.70
	BUYING														
	TOTAL														
H. D. COPELAND & COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
WM. DANIEL	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
DOLAN, LUDEMAN & COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
DROVERS COM. COMPANY	SELLING	4 698	2 475.15	13 357	7 316.35	4 037	2 760.90	5 899	1 709.00	49	7.35	19 963	3 414.33	896	125.03
	BUYING														
	TOTAL														
DUNBAR, ST. JOHN & COMPANY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
H. L. DUNNING & CO.	SELLING	1 945	982.25	2 378	1 484.35	529	387.10	582	172.20	98	13.28	7 846	1 497.65	162	19.19
	BUYING														
	TOTAL														
ETTLINGER L. S. COM. CO.	SELLING	252	140.75	1 233	755.10	193	144.30	247	78.30	6	.90	7 094	1 326.25	131	25.95
	BUYING														
	TOTAL														
EVANS, SNIDER, BUEL COMPANY	SELLING	1 143	631.85	2 474	1 548.55	599	447.85	1 036	366.10	1 130	167.10	16 877	3 673.20	3 420	421.51
	BUYING														
	TOTAL														
FILLER, WILSON, MCCLELLAND	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
WM. GENTLEMAN & SONS	SELLING	4 512	2 418.55	10 513	6 536.05	3 552	2 514.25	1 858	554.45	967	144.00	21 879	4 665.78	322	73.60
	BUYING														
	TOTAL														
I. O. FRY	SELLING	(DESTROYED IN THE FIRE)													
	BUYING														
	TOTAL														
GILLOGLY & CO.	SELLING	2 099	1 198.85	5 664	3 075.65	1 338	1 008.95	3 798	1 223.80	7 623	640.50	26 624	5 937.35	317	75.55
	BUYING														
	TOTAL														
GREENWOOD COM. COMPANY	SELLING	262	148.95	433	294.95	87	70.90	792	259.70	663	84.40	11 032	2 457.90	37	9.85
	BUYING														
	TOTAL														
HEFNER COM. COMPANY	SELLING	2 595	1 464.05	4 374	2 974.25	984	787.40	4 683	1 582.15	2 397	360.85	25 523	6 029.80	634	150.10
	BUYING														
	TOTAL														

OCK HANDLED BY PETITIONERS DURING THE FOUR MONTHS ENDED APRIL 30, 1934
cept in instances where records were destroyed in the fire)
SSIONS UNDER SECRETARY'S RATES AS COMPARED WITH THE PRESENT COMMISSIONS

SCHEDULE NO. 2

AND SECRETARY'S COMMISSIONS									PRESENT COMMISSIONS				DIFFERENCE			
	SWINE				SHEEP		EXTRA CHARGES			EXTRA CHARGES						
	PIGS		HOGS				FOR	CHECKS	TOTAL	REGULAR	FOR	PRORATING	TOTAL	PRESENT OVER	PRESENT UNDER	NET	PERCENT OF
	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	DRAFTS	& A/S		COMMS	DRAFTS	& A/S		SECY.	SECY.	REDUCTION	REDUCTION
8.30	635	99.25	31 816	6 795.55	530	84.92	159.70	72.40	17 096.52	21 275.79	145.30	132.80	21 553.89	4 546.74	89.37		
									94.50				94.50				
									17 191.02				21 648.39			4 457.37	20.59
9.65	154	19.55	27 919	5 900.00	944	116.70	210.10	.10	12 728.95	15 742.28	188.42	209.37	16 140.07	3 522.81	111.69		
									9.50				9.50				
									12 738.45				16 149.57			3 411.12	21.12
9.00	49	7.35	19 963	3 414.33	896	125.03	428.25	18.75	18 255.11	22 316.58	315.40	1.55	22 633.53	4 494.57	116.15		
									4.50				4.50				
									18 259.61				22 638.03			4 378.42	19.34
2.20	98	13.28	7 846	1 497.65	162	19.19	68.85	.90	4 625.77	5 755.95	56.65	2.35	5 814.95	1 204.65	15.47		
									15.50				15.50				
									4 641.27				5 830.45			1 189.18	20.40
1.30	6	.90	7 094	1 326.25	131	25.95	28.10	3.55	2 523.20	3 088.10	45.00	110.00	3 243.10	740.32	20.42		
									89.50				89.50				
									2 612.70				3 332.60			719.90	21.60
.10	1 130	167.10	16 077	3 673.20	3 420	421.51	16.35	8.20	7 280.71	9 111.56	14.85	22.00	9 148.41	1 927.83	60.13		
									252.60				252.60				
									7 533.31				9 401.01			1 867.70	19.87
.40	967	144.00	21 879	4 665.78	322	73.60	319.55	.90	17 227.13	21 488.62	159.10	45.30	21 693.02	4 541.14	75.25		
									1 048.50				1 048.50				
									18 275.63				22 741.52			4 465.89	19.64
	7 623	640.50	26 624	5 937.35	317	75.55	168.75	.80	13 330.20	16 896.55	14.85	3.05	16 914.45	3 673.79	89.54		
									87.00				87.00				

								9.50				9.50				
								12 738.45				16 149.57			3 411.12	21.12
49	7.35	19 963	3 414.33	896	125.03	428.25	18.75	18 255.11	22 316.58	315.40	1.55	22 633.53	4 494.57	116.15		
								4.50				4.50				
								18 259.61				22 638.03			4 378.42	19.34
98	13.28	7 846	1 497.65	162	19.19	68.85	.90	4 625.77	5 755.95	56.65	2.35	5 814.95	1 204.65	15.47		
								15.50				15.50				
								4 641.27				5 830.45			1 189.18	20.40
6	.90	7 094	1 326.25	131	25.95	28.10	3.55	2 523.20	3 088.10	45.00	110.00	3 243.10	740.32	20.42		
								89.50				89.50				
								2 612.70				3 332.60			719.90	21.60
130	167.10	16 877	3 673.20	3 420	421.51	16.35	8.20	7 280.71	9 111.56	14.85	22.00	9 148.41	1 927.83	60.13		
								252.60				252.60				
								7 533.31				9 401.01			1 867.70	19.87
967	144.00	21 879	4 665.78	322	73.60	319.55	.90	17 227.13	21 488.62	159.10	45.30	21 693.02	4 541.14	75.25		
								1 048.50				1 048.50				
								18 275.63				22 741.52			4 465.89	19.64
623	640.50	26 624	5 937.35	317	75.55	168.75	.80	13 330.20	16 896.55	14.85	3.05	16 914.45	3 673.79	89.54		
								87.00				87.00				
								13 417.20				17 001.45			3 584.25	21.06
863	84.40	11 032	2 457.90	37	9.85	21.45	4.75	3 352.85	3 750.20	50.25	174.25	3 974.70	725.01	103.16		
								NONE				NONE				
								3 352.85				3 974.70			621.85	15.65
2 397	360.85	25 523	6 029.80	634	150.10	194.40	–	13 543.00	16 315.80	190.60	227.40	16 733.80	3 393.53	202.73		
								12.50				12.50				
								13 555.50				16 746.30			3 190.80	19.6

VOLUME OF LIVESTOCK HANDLED BY PETITIONERS DURING THE FOUR
(Except in instances where records were destro
SHOWING THE COMMISSIONS UNDER SECRETARY'S RATES AS COMPARED

NAME OF FIRM	SERVICE	ANALYSIS OF CONSIGNMENTS AND SECRETARY'S COMM												
		CATTLE						CALVES		SWINE				SH
		LIGHT		MEDIUM		HEAVY				PIGS		HOGS		
		HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD
HAIME & RENEKER	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
CHAS. W. HARDING COMPANY	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
HAFNER, NIXON COM. COMPANY	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
HOLLOWAY & DORAN	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
INGWERSEN, MOSIER & INGWERSEN	SELLING BUYING TOTAL	1 919	999.75	6 794	4 057.05	4 646	3 167.29	322	107.15	121	16.15	19 291	3 795.74	779
IOWA L. S. COM. CO.	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
W. C. JENNINGS & CO.	SELLING BUYING TOTAL	1 381	698.45	2 431	1 494.30	615	447.95	509	151.20	-	-	3 355	674.15	110
L. A. KEYS & COMPANY	SELLING BUYING TOTAL	168	89.40	282	183.20	48	37.30	420	139.65	13	1.95	3 978	908.50	6
KNETTLE BROTHERS	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
KUENSTER L. S. COM. CO.	SELLING BUYING TOTAL	5 792	2 957.75	17 822	10 317.55	7 055	4 899.60	3 890	1 247.45	3 415	359.90	47 931	9 084.66	1 582
LAWLER BROS. & COMPANY	SELLING BUYING TOTAL	5 207	2 772.35	16 824	10 622.05	7 281	5 087.30	20 695	5 017.02	472	70.10	14 443	2 914.20	3 059
MCCAUSLAND, HOAG & VAUGHAN	SELLING BUYING TOTAL	3 279	1 644.55	13 225	7 399.80	6 255	4 253.75	606	203.85	143	22.20	5 795	1 201.15	4 32
	SELLING	673	343.40	1 201	775.25	391	289.30	259	83.85	62	9.30	5 605	1 195.75	45

CHAS. W. HARDING COMPANY	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
HAFNER, NIXON COM. COMPANY	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
HOLLOWAY & CORBIN	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
INGWERSEN, MOSIER & INGWERSEN	SELLING BUYING TOTAL	1 919	999.75	6 794	4 057.05	4 646	3 167.29	322	107.15	121	16.15	19 291	3 795.74	779
IOWA L. S. COM. CO.	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
W. C. JENNINGS & CO.	SELLING BUYING TOTAL	1 381	698.45	2 431	1 494.30	615	447.95	509	151.20	-	-	3 355	674.15	110
L. A. KEYS & COMPANY	SELLING BUYING TOTAL	168	89.40	282	183.20	48	37.30	420	139.65	13	1.95	3 978	908.50	6
KNETTLE BROTHERS	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												
KUENSTER L. S. COM. CO.	SELLING BUYING TOTAL	5 792	2 957.75	17 822	10 317.55	7 055	4 899.60	3 890	1 247.45	3 415	359.90	47 931	9 084.66	1 582
LAWLER BROS. & COMPANY	SELLING BUYING TOTAL	5 207	2 772.35	6 824	10 622.05	7 281	5 087.30	20 695	5 017.02	472	70.10	14 443	2 914.20	3 059
MCCAUSLAND, HOAG & VAUGHAN	SELLING BUYING TOTAL	3 279	1 644.55	13 225	7 399.80	6 255	4 253.75	606	203.85	143	22.20	5 795	1 201.15	4 321
MARTIN BROS. & CO. (APRIL ONLY)	SELLING BUYING TOTAL	673	343.40	1 201	775.25	391	289.30	259	83.85	62	9.30	5 605	1 195.75	42
MERRION & WILKINS	SELLING BUYING TOTAL	(DESTROYED BY FIRE)												
MILLER, WHITE & WOODS	SELLING BUYING TOTAL	3 810	2 055.35	8 499	5 490.30	2 259	1 712.85	2 939	955.25	1 567	235.20	24 219	5 376.04	2 685
MINTEER, HUBBIRD & CO.	SELLING BUYING TOTAL	(DESTROYED IN THE FIRE)												

LED BY PETITIONERS DURING THE FOUR MONTHS ENDED APRIL 30, 1934 — Sheet 3 of 7
Instances where records were destroyed by the fire)
NDER SECRETARY'S RATES AS COMPARED WITH THE PRESENT COMMISSIONS — SCHEDULE NO. 2

SECRETARY'S COMMISSIONS								PRESENT COMMISSIONS				DIFFERENCE			
SWINE				SHEEP		EXTRA CHARGES		TOTAL	REGULAR COMMS	EXTRA CHARGES		TOTAL	PRESENT OVER SECY.	PRESENT UNDER SECY.	NET REDUCTION	PERCENT OF REDUCTION
PIGS		HOGS				FOR DRAFTS	CHECKS & A/S.			FOR DRAFTS	PRORATING & A/S					
AD	COMMS	HEAD	COMMS	HEAD	COMMS											
121	16.15	19 291	3 795.74	779	68.09	71.15	18.45	12 300.82 178.10 12 478.92	16 268.62	36.10	94.71	16 399.43 178.10 16 577.53	4 145.16	46.55	4 098.61	24.72
-	-	3 355	674.15	110	13.90	107.30	5.55	3 592.80 NONE 3 592.80	4 378.09	104.35	69.10	4 551.54 NONE 4 551.54	1 004.37	45.63	958.74	21.06
13	1.95	3 978	908.50	6	1.85	9.75	10.95	1 382.55 NONE 1 382.55	1 713.60	5.40	12.60	1 731.60 NONE 1 731.60	368.50	19.45	349.05	20.16
415	359.90	47 931	9 084.66	1 582	191.61	248.70	12.80	29 320.02 41.50 29 361.52	33 951.21	292.90	602.55	34 846.66 41.50 34 888.16	5 799.61	272.97	5 526.64	15.84
472	70.10	14 443	2 914.20	3 059	381.32	713.25	103.25	27 680.84 252.00 27 932.84	32 993.49	609.90	183.05	33 786.44 252.00 34 038.44	6 823.82	718.22	6 105.65	17.94
143	22.20	5 795	1 201.15	4 321	353.92	144.80	15.40	15 239.42 254.00 15 493.42	20 922.62	18.15	23.80	20 964.57 254.00 21 218.57	5 747.57	22.42	5 725.15	26.98
22	9.30	5 605	1 195.75	42	10.10	37.30	11.65	2 755.90	3 502.70	20.95	31.40	3 555.05	812.51	13.36		

1	16.15	19 291	3 795.74	779	68.09	71.15	18.45	12 300.82 178.10 12 478.92	16 268.62	36.10	94.71	16 399.43 178.10 16 577.53	4 145.16	46.55	4 098.61	24.72
	-	3 355	674.15	110	13.90	107.30	5.55	3 592.80 NONE 3 592.80	4 378.09	104.35	69.10	4 551.54 NONE 4 551.54	1 004.37	45.63	958.74	21.06
3	4.95	3 978	908.50	6	1.85	9.75	10.95	1 382.55 NONE 1 382.55	1 713.60	5.40	12.60	1 731.60 NONE 1 731.60	368.50	19.45	349.05	20,10
5	359.90	47 931	9 084.66	1 582	191.61	248.70	12.80	29 320.02 41.50 29 361.52	33 951.21	292.90	602.55	34 846.66 41.50 34 888.16	5 799.61	272.97	5 526.64	15.84
2	70.10	14 443	2 914.20	3 059	381.32	713.25	103.25	27 680.84 252.00 27 932.84	32 993.49	609.90	183.05	33 786.44 252.00 34 038.44	6 823.82	718.22	6 105.65	17.94
3	22.20	5 795	1 201.15	1 321	353.92	144.80	15.40	15 239.42 254.00 15 493.42	20 922.62	18.15	23.80	20 964.57 254.00 21 218.57	5 747.57	22.42	5 725. 5	26.98
2	9.30	5 605	1 195.75	42	10.10	37.30	11.65	2 755.90 89.90 2 845.80	3 502.70	20.95	31.40	3 555.05 89.90 3 644.95	812.51	13.36	799.15	21.92
	235.20	24 219	5 376.04	2 685	327.66	268.20	16.25	16 437.10 349.40 16 786.50	20 484.93	183.30	82.65	20 750.88 349.40 21 100.28	4 412.27	98.49	4 313.78	20.44

VOLUME OF LIVESTOCK HANDLED BY PETITIONERS DURING THE FOUR
(Except in instances where records were destroyed
SHOWING THE COMMISSIONS UNDER SECRETARY'S RATES AS COMPARED

NAME OF FIRM	SERVICE	ANALYSIS OF CONSIGNMENTS AND SECRETARY'S COMMIS													
		CATTLE						CALVES		SWINE				SHEE	
		LIGHT		MEDIUM		HEAVY				PIGS		HOGS			
		HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	C
CHAS. H. MOBERLY	SELLING BUYING TOTAL	97	54.65	158	105.20	19	15.75	28	8.85	1	.15	321	77.05	-	
MULLEN COM. CO. (APRIL DESTROYED BY THE FIRE)	SELLING BUYING TOTAL	694	376.15	1 636	1 022.60	405	307.10	448	151.15	472	65.10	10 966	2 247.65	38	
MURRAY & MCDOWELL	SELLING BUYING TOTAL	680	369.05	1 811	1 122.25	751	539.50	636	216.70	344	50.85	11 309	2 508.89	448	
MUTUAL L. S. COM. CO. (MARCH & APRIL DESTROYED)	SELLING BUYING TOTAL	888	480.35	3 107	1 945.35	947	681.00	1 136	364.90	806	117.05	15 750	3 335.45	988	
NALLEY COM. COMPANY (APRIL DESTROYED BY FIRE)	SELLING BUYING TOTAL	525	287.30	648	417.75	223	163.65	244	82.20	211	31.15	3 556	784.05	21	
JOSEPH F. NASH	SELLING BUYING TOTAL	(DESTROYED BY THE FIRE)													
NATIONAL L. S. COM. CO.	SELLING BUYING TOTAL	8 868	4 545.49	17 133	10 389.50	11 451	7 883.29	3 959	1 218.62	732	106.65	42 582	8 845.70	17 736	1
C. E. NIXON & CO.	SELLING BUYING TOTAL	(DESTROYED BY THE FIRE)													
NORTHWESTERN L. S. COM. CO.	SELLING BUYING TOTAL	1 974	1 049.90	7 019	4 543.45	1 232	874.40	823	223.20	3	.45	12 812	2 414.87	2 964	
SILAS PALMER & SONS	SELLING BUYING TOTAL	2 424	1 306.05	7 737	4 738.80	2 498	1 778.40	3 756	1 085.85	1 068	125.00	11 235	2 126.94	230	
JOHN PATTERSON & SON	SELLING BUYING TOTAL	74	40.70	122	78.55	130	87.10	3	1.20	1	.15	307	51.90	-	
PETERSON, TURNBULL & COMPANY	SELLING BUYING TOTAL	2 276	1 267.85	4 901	3 185.30	1 303	953.25	1 302	436.25	595	91.49	18 594	4 144.13	359	
RICE BROTHERS (ALL DESTROYED BY FIRE)	SELLING BUYING TOTAL	2 931	1 490.00	7 115	4 340.05	4 620	3 196.30	1 849	573.10	429	69.75	20 820	4 043.45	3 219	

MULLEN COM. CO. (APRIL DESTROYED BY THE FIRE)	SELLING BUYING TOTAL	694	376.15	1 636	1 022.60	405	307.10	443	151.15	472	65.10	10 966	2 247.65	38	5.
MURRAY & MCDOWELL	SELLING BUYING TOTAL	680	369.05	1 811	1 122.25	751	539.50	636	216.70	344	50.85	11 309	2 508.89	448	37.
MUTUAL L. S. COM. CO. (MARCH & APRIL DESTROYED)	SELLING BUYING TOTAL	888	480.35	3 107	1 945.35	947	681.00	1 136	364.90	806	117.05	15 750	3 335.45	988	134.
NALLEY COM. COMPANY (APRIL DESTROYED BY FIRE)	SELLING BUYING TOTAL	525	287.30	648	417.75	223	163.65	244	82.20	211	31.15	3 556	784.05	21	5.
JOSEPH F. NASH	SELLING BUYING TOTAL	(DESTROYED BY THE FIRE)													
NATIONAL L. S. COM. CO.	SELLING BUYING TOTAL	8 863	4 545.49	17 133	10 389.50	11 451	7 883.29	3 959	1 218.62	732	106.65	42 582	8 845.70	17 736	1 744.
C. E. NIXON & CO.	SELLING BUYING TOTAL	(DESTROYED BY THE FIRE)													
NORTHWESTERN L. S. COM. CO.	SELLING BUYING TOTAL	1 974	1 049.90	7 019	4 543.45	1 232	874.40	823	223.20	3	.45	12 812	2 414.87	2 964	231
SILAS PALMER & SONS	SELLING BUYING TOTAL	2 424	1 306.05	7 737	4 738.80	2 498	1 778.40	3 756	1 085.85	1 068	125.00	11 235	2 126.94	230	32
JOHN PATTERSON & SON	SELLING BUYING TOTAL	74	40.70	122	78.55	130	87.10	3	1.20	1	.15	307	51.90	-	
PETERSON, TURNBULL & COMPANY	SELLING BUYING TOTAL	2 276	1 267.85	4 901	3 185.30	1 303	953.25	1 302	436.25	595	91.49	18 594	4 144.13	359	78
RICE BROTHERS (APRIL DESTROYED BY FIRE)	SELLING BUYING TOTAL	2 931	1 490.00	7 115	4 340.05	4 620	3 196.30	1 849	573.10	429	69.75	20 820	4 043.45	3 219	305
ALEX RINDERLE & CO.	SELLING BUYING TOTAL	1 076	602.35	1 537	1 047.85	392	302.05	1 600	541.50	1 202	175.30	19 575	4 709.00	673	121
ROACH L. S. COM. COMPANY (JANUARY ONLY)	SELLING BUYING TOTAL	728	347.70	645	368.10	153	107.35	37	11.70	16	2.40	306	70.90	-	
CHAS. O. ROBINSON & CO. (APRIL DESTROYED BY FIRE)	SELLING BUYING TOTAL	395	207.20	1 874	1 126.00	2 270	1 541.60	81	26.10	164	22.85	1 054	231.95	687	76

NDLED BY PETITIONERS DURING THE FOUR MONTHS ENDED APRIL 30, 1934
nstances where records were destroyed by the fire)
UNDER SECRETARY'S RATES AS COMPARED WITH THE PRESENT COMMISSIONS

SCHEDULE NO. 2

NO	SECRETARY'S COMMISSIONS								PRESENT COMMISSIONS				DIFFERENCE			
	SWINE				SHEEP		EXTRA CHARGES			EXTRA CHARGES						
	PIGS		HOGS				FOR	CHECKS	TOTAL	REGULAR	FOR	PRORATING	TOTAL	PRESENT OVER	PRESENT UNDER	NET	PERCENT OF
	HEAD	FOMMS	HEAD	COMMS	HEAD	COMMS	DRAFTS	& A/S		COMMS	DRAFTS	& A/S		SECY.	SECY.	REDUCTION	REDUCTION
	1	.15	321	77.05	–	–	1.50	1.25	264.40 NONE 264.40	341.65	7.95	7.05	356.65 NONE 356.65	93.31	1.06	92.25	25.86
	472	65.10	10 966	2 247.65	38	9.70	47.70	.10	4 227.25 NONE 4 227.25	5 429.98	5.55	11.15	5 446.68 NONE 5 446.68	1 261.24	41.81	1 219.43	22.39
	344	50.85	11 309	2 508.89	448	57.76	41.85	27.35	4 934.20 18.00 4 952.20	5 979.14	41.00	111.60	6 131.74 18.00 6 149.74	1 248.09	50.55	1 197.54	19.47
	806	117.05	15 750	3 335.45	988	124.15	94.10	.05	7 142.40 34.00 7 176.40	8 525.68	142.85	205.35	8 873.88 34.00 8 907.88	1 805.55	74.07	1 731.48	19.44
	211	31.15	3 556	784.05	21	5.45	12.60	–	1 784.15 NONE 1 784.15	2 287.24	13.20	–	2 300.44 NONE 2 300.44	544.45	28.16	516.29	22.44
	732	106.65	42 582	8 845.70	17 736	1 744.43	479.40	62.60	35 275.68 151.40 35 427.08	45 571.82	214.50	12.40	45 798.72 151.40 45 950.12	10 711.99	188.95	10 523.04	22.90
	3	.45	12 812	2 414.87	2 964	231.56	109.95	–	9 447.78 NONE 9 447.78	11 450.07	101.25	31.15	11 582.47 NONE 11 582.47	2 169.82	35.13	2 134.69	18.43
	1 068	125.00	11 235	2 126.94	230	52.35	353.95	.80	11 568.14 72.50 11 640.64	14 060.74	293.25	7.35	14 361.34 72.50 14 433.84	2 836.15	42.95	2 793.20	19.35
	1	.15	307	51.90	–	–	1.35	–	260.95 NONE 260.95	334.61	.90	–	335.51 NONE 335.51	74.66	.10	74.56	22.22
	595	91.49	18 594	4 144.13	359	78.65	77.85	11.25	10 246.02 75.70 10 321.72	13 146.35	30.75	21.90	13 199.00 75.70 13 274.70	3 008.78	55.80	2 952.98	22.25
	329	69.75	20 820	4 043.45	3 219	305.16	101.70	.35	14 119.86	18 204.37	116.55	226.48	18 547.40	4 491.57	64.03		

472	65.10	10 966	2 247.65	98	9.70	47.70	.10	4 227.25 NONE 4 227.25	5 429.98	5.55	11.15	5 446.68 NONE 5 446.68	1 261.24	41.81	1 219.43	22.39
344	50.85	11 309	2 508.89	448	57.76	41.85	27.35	4 934.20 18.00 4 952.20	5 979.14	41.00	111.60	6 131.74 18.00 6 149.74	1 248.09	50.55	1 197.54	19.47
806	117.05	15 750	3 335.45	988	124.15	94.10	.05	7 142.40 34.00 7 176.40	8 525.68	142.85	205.35	8 873.88 34.00 8 907.88	1 805.55	74.07	1 731.48	19.44
211	31.15	3 556	784.05	21	5.45	12.60	–	1 784.15 NONE 1 784.15	2 287.24	13.20	–	2 300.44 NONE 2 300.44	544.45	28.16	516.29	22.44
732	106.65	42 582	8 845.70	17 736	1 744.43	479.40	62.60	35 275.68 151.40 35 427.08	45 571.82	214.50	12.40	45 798.72 151.40 45 950.12	10 711.99	188.95	10 523.04	22.90
3	.45	12 812	2 414.87	2 964	231.56	109.95	–	9 447.78 NONE 9 447.78	11 450.07	101.25	31.15	11 582.47 NONE 11 582.47	2 169.82	35.15	2 134.69	18.43
1 068	125.00	11 235	2 126.94	230	52.35	353.95	.80	11 568.14 72.50 11 640.64	14 060.74	293.25	7.35	14 361.34 72.50 14 433.84	2 836.15	42.95	2 793.20	19.35
1	.15	307	51.90	–	–	1.35	–	260.95 NONE 260.95	334.61	.90	–	335.51 NONE 335.51	74.66	.10	74.56	22.22
595	91.49	18 594	4 144.13	359	78.65	77.85	11.25	10 246.02 75.70 10 321.72	13 146.35	30.75	21.90	13 199.00 75.70 13 274.70	3 008.78	55.80	2 952.98	22.25
429	69.75	20 820	4 043.45	3 219	305.16	101.70	.35	14 119.86 752.00 14 871.86	18 204.37	116.55	226.48	18 547.40 752.00 19 299.40	4 491.57	64.03	4 427.54	22.94
202	175.30	19 575	4 709.00	673	121.75	86.40	.20	7 586.40 13.50 7 599.90	9 204.55	73.65	215.25	9 493.45 13.50 9 506.95	1 997.68	90.63	1 907.05	20.06
16	2.40	306	70.90	–	–	5.00	2.40	915.55 NONE 915.55	1 058.55	4.20	3.00	1 065.75 NONE 1 065.75	151.30	1.10	150.20	14.09
164	22.85	1 054	231.95	687	76.50	28.20	.05	3 260.45 NONE 3 260.45	4 288.30	18.25	16.55	4 323.10 NONE 4 323.10	1 075.95	13.30	1 062.65	24.58

VOLUME OF LIVESTOCK HANDLED BY PETITIONERS DURING THE F
(Except in instances where records were dest
SHOWING THE COMMISSIONS UNDER SECRETARY'S RATES AS COMPA

NAME OF FIRM	SERVICE	ANALYSIS OF CONSIGNMENTS AND SECRETARY'S COMM													
		CATTLE						CALVES		SWINE				SHE	
		LIGHT		MEDIUM		HEAVY				PIGS		HOGS			
		HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	
ROSENBAUM BROTHERS & CO. (APRIL DESTROYED BY FIRE)	SELLING	750	364.50	2 937	1 760.60	2 992	1 994.35	175	50.70	83	11.75	4 305	885.25	6 999	
	BUYING														
	TOTAL														
ST. JOHN, COMPTON, DUNBAR & CO.	SELLING	561	295.30	2 705	1 651.00	1 805	1 272.80	149	46.25	140	21.10	6 147	1 270.90	86	
	BUYING														
	TOTAL														
SARSFIELD & SCHROEDER COM. CO.	SELLING	532	284.90	1 134	735.50	280	214.10	1 250	426.15	169	25.65	15 009	3 073.19	223	
	BUYING														
	TOTAL														
A. P. SCHMAL	SELLING	(DESTROYED BY THE FIRE)													
	BUYING														
	TOTAL														
SCHROEDER L. S. COM. CO.	SELLING	889	486.15	2 068	1 290.45	557	410.30	1 608	506.55	389	59.90	220.40	4 246.70	125	
	BUYING														
	TOTAL														
SHELDON COM. CO.	SELLING	114	60.60	154	97.95	85	28.95	75	25.65	16	2.40	1 649	443.30	3	
	BUYING														
	TOTAL														
SHERWOOD & SON	SELLING	(DESTROYED BY THE FIRE)													
	BUYING														
	TOTAL														
SCHULTZ COM. CO.	SELLING	(DESTROYED BY THE FIRE)													
	BUYING														
	TOTAL														
W. R. SMITH & SON	SELLING	(DESTROYED BY THE FIRE)													
	BUYING														
	TOTAL														
E. SPENCER & CO.	SELLING	(DESTROYED BY THE FIRE)													
	BUYING														
	TOTAL														
STAFFORD BROTHERS	SELLING	1 689	1 008.95	5 222	3 416.55	1 755	1 300.60	1 092	368.35	481	70.05	15 960	3 554.43	993	
	BUYING														
	TOTAL														
STANDARD L. S. COM. CO.	SELLING	2 104	1 132.15	3 562	2 209.05	1 171	831.65	1 353	451.20	223	32.95	21 631	4 319.32	1 515	
	BUYING														
	TOTAL														
STARRETT L. S. COM. CO. (APRIL DESTROYED BY FIRE)	SELLING	979	497.80	1 022	643.60	134	104.25	376	113.00	6	.90	2 824	603.70	18	
	BUYING														
	TOTAL														

(APRIL DESTROYED BY FIRE)	BUYING TOTAL													
ST. JOHN, COMPTON, DUNBAR & CO.	SELLING	561	295.30	2 705	1 651.00	1 805	1 272.80	149	46.25	140	21.10	6 147	1 270.90	86
	BUYING													
	TOTAL													
SARSFIELD & SCHROEDER COM. CO.	SELLING	532	284.90	1 134	735.50	280	214.10	1 250	426.15	169	25.65	15 009	3 073.19	223
	BUYING													
	TOTAL													
A. P. SCHMAL	SELLING	(DESTROYED BY THE FIRE)												
	BUYING													
	TOTAL													
SCHROEDER L. S. COM. CO.	SELLING	889	486.15	2 068	1 290.45	557	410.30	1 608	506.55	389	59.90	220.40	4 246.70	125
	BUYING													
	TOTAL													
SHELDON COM. CO.	SELLING	114	60.60	154	97.95	85	28.95	75	25.65	16	2.40	1 649	443.30	3
	BUYING													
	TOTAL													
SHERWOOD & SON	SELLING	(DESTROYED BY THE FIRE)												
	BUYING													
	TOTAL													
SCHULTZ COM. CO.	SELLING	(DESTROYED BY THE FIRE)												
	BUYING													
	TOTAL													
W. R. SMITH & SON	SELLING	(DESTROYED BY THE FIRE)												
	BUYING													
	TOTAL													
E. SPENCER & CO.	SELLING	(DESTROYED BY THE FIRE)												
	BUYING													
	TOTAL													
STAFFORD BROTHERS	SELLING	1 689	1 008.95	5 222	3 416.55	1 755	1 300.60	1 092	368.35	481	70.05	15 960	3 554.43	993
	BUYING													
	TOTAL													
STANDARD L. S. COM. CO.	SELLING	2 104	1 132.15	3 562	2 209.05	1 171	831.65	1 353	451.20	223	32.95	21 631	4 319.32	1 515
	BUYING													
	TOTAL													
STARRETT L. S. COM. CO. (APRIL DESTROYED BY FIRE)	SELLING	979	497.80	1 022	643.60	134	104.25	376	113.00	6	.90	2 824	603.70	18
	BUYING													
	TOTAL													
STOCKMENS L. S. COM. CO. (INC HALPIN & CO. IN MAR. & APR.	SELLING	4 126	2 170.00	7 243	4 483.80	1 782	327.75	1 778	583.45	883	126.32	20 721	4 233.04	735
	BUYING													
	TOTAL													
C. W. HART	SELLING	(DESTROYED BY THE FIRE)												
	BUYING													
	TOTAL													
STEPHENSON COM. CO.	SELLING	76	42.05	300	187.30	43	31.75	356	108.75	65	16.25	7 625	1 382.12	12
	BUYING													
	TOTAL													

BY PETITIONERS DURING THE FOUR MONTHS ENDED APRIL 30, 1934

ces where records were destroyed in the fire)

R SECRETARY'S RATES AS COMPARED WITH THE PRESENT COMMISSIONS

SCHEDULE NO. 2

SECRETARY'S COMMISSIONS								PRESENT COMMISSIONS				DIFFERENCE			
SWINE			SHEEP		EXTRA CHARGES		TOTAL	REGULAR COMMS	EXTRA CHARGES		TOTAL	PRESENT OVER SECY.	PRESENT UNDER SECY.	NET REDUCTION	PERCENT OF REDUCTION
	HOGS														
COMMS	HEAD	COMMS	HEAD	COMMS	FOR DRAFTS	CHECKS & A/S			FOR DRAFTS	PRORATING & A/S					
11.75	4 305	885.25	6 999	560.37	27.90	–	5 655.42	7 094.10	8.85	22.20	7 125.15	1 478.38	8.65		
							2.40				2.40				
							5 657.82				7 127.55			1 469.73	20.62
21.10	6 147	1 270.90	86	18.80	34.35	–	4 610.50	6 121.54	23.55	21.10	6 166.19	1 563.73	8.04		
							NONE				NONE				
							4 610.50				6 166.19			1 555.69	25.23
25.65	15 009	3 073.19	223	50.95	47.25	4.95	4 862.64	5 483.38	76.95	259.12	5 819.45	1 030.61	73.80		
							NONE				NONE				
							4 862.64				5 819.45			956.81	16.44
59.90	220.40	4 246.70	125	25.45	102.15	–	7 127.65	8 659.09	64.80	57.60	8 781.49	1 813.15	159.31		
							NONE				NONE				
							7 127.65				8 781.49			1 653.84	18.83
2.40	1 649	443.30	3	.85	9.45	–	669.15	764.50	14.85	27.15	806.50	156.42	19.07		
							NONE				NONE				
							669.15				806.50			137.35	17.03
70.05	15 960	3 554.43	993	136.08	114.00	6.85	9 975.86	12 472.95	138.30	190.95	12 802.20	2 920.74	94.40		
							380.55				380.55				
							10 356.41				13 182.75			2 826.34	21.44
32.95	21 631	4 319.32	1 515	195.90	132.30	4.05	9 308.57	11 509.52	180.95	123.45	11 813.92	2 596.01	90.66		
							32.80				32.80				
							9 341.37				11 846.72			2 505.35	21.15
on	2 824	603.70	19	4.90	31.05	–	1 999.20	2 683.35	4.05	2.50	2 689.90	694.00	3.30		

140	21.10	6 147	1 270.90	86	18.80	34.35	–	4 610.50 NONE 4 610.50	6 121.54	23.55	21.10	6 166.19 NONE 6 166.19	1 563,73	8.04	1 555.69	25.23
169	25.65	15 009	3 073.19	223	50.95	47.25	4.95	4 862.64 NONE 4 862.64	5 483.38	76.95	259.12	5 819.45 NONE 5 819.45	1 030.61	73.80	956.81	16.44
389	59.90	220.40	4 246.70	125	25.45	102.15	–	7 127.65 NONE 7 127.65	8 659.09	64.80	57.60	8 781.49 NONE 8 781.49	1 813.15	159.31	1 653.84	18.83
16	2.40	1 649	443.30	3	.85	9.45	–	669.15 NONE 669.15	764.50	14.85	27.15	806.50 NONE 806.50	156.42	12.07	137.35	17.03
481	70.05	15 960	3 554.43	993	136.08	114.00	6.85	9 975.86 380.55 10 356.41	12 472.95	138.30	190.95	12 802.20 380.55 13 182.75	2 920.74	94.40	2 826.34	21.41
223	32.95	21 631	4 319.32	1 515	196.90	132.30	4.05	9 308.57 32.80 9 341.37	11 509.52	180.95	123.45	11 813.92 32.80 11 846.72	2 596.01	90.66	2 505.35	21.15
6	.90	2 824	603.70	18	4.90	31.05	–	1 999.20 54.00 2 053.20	2 683.35	4.05	2.50	2 689.90 54.00 2 743.90	694.00	3.30	690.70	25.17
883	126.32	20 721	4 233.04	735	113.49	334.20	.40	13 372.45 166.50 13 538.95	15 615.70	307.05	344.70	16 267.45 166.50 16 433.95	3 028.03	133.03	2 895.00	17.62
65	16.25	7 625	1 382.12	12	4.75	4.65	.10	1 777.72 NONE 1 777.72	2 135.39	4.05	3.20	2 142.64 NONE 2 142.64	411.71	46.79	364.92	16.93

VOLUME OF LIVESTOCK HANDLED BY PETITIONERS DURING THE FOUR
(Except in instances where the records were dest
SHOWING THE COMMISSIONS UNDER SECRETARY'S RATES AS COMPARED

NAME OF FIRM	SERVICE	ANALYSIS OF CONSIGNMENTS AND SECRETARY'S COMM													
		CATTLE						CALVES		SWINE				SHE	
		LIGHT		MEDIUM		HEAVY				PIGS		HOGS			
		HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	C
(INCLUDES ADLER SONS & CO.) SWANSON, GILMORE & CASTENHOLTZ (APRIL DESTROYED BY FIRE)	SELLING	3 353	1 777.30	8 676	5 327.55	5 322	3 675.05	2 013	598.35	2 331	226.25	30 248	6 066.14	1 578	
	BUYING														
	TOTAL														
SWINEY BROTHERS	SELLING	1 191	649.55	3 029	1 915.65	846	628.80	975	330.60	638	48.85	38 005	7 861.14	488	
	BUYING														
	TOTAL														
UNITED COM. CO.	SELLING	(DESTROYED BY THE FIRE)													
	BUYING														
	TOTAL														
GEORGE W. VON BERNER	SELLING	(DESTROYED BY THE FIRE)													
	BUYING														
	TOTAL														
DAVID C. WAGNER (APRIL DESTROYED BY FIRE,	SELLING	16	8.80	51	34.15	61	42.90	2	.60	106	13.25	2 611	449.30	9	
	IVING														
	TOTAL														
WALTER BROTHERS	SELLING	315	163.15	652	409.80	131	92.25	55	16.50	9	1.35	919	181.30	253	
	BUYING														
	TOTAL														
WALTERS & DUNBAR	SELLING	4 135	2 172.50	12 687	7 826.15	5 956	4 156.35	1 142	364.65	3 133	234.35	28 057	5 675.00	4 177	
	BUYING														
	TOTAL														
L. B. WORDEN	SELLING	164	90.20	551	354.85	169	133.75	24	7.50	35	5.25	943	226.20	-	
	BUYING														
	TOTAL														
W. W. WILSON & COMPANY	SELLING	2 136	1 221.65	5 379	3 518.40	1 436	1 088.75	2 234	707.55	653	102.00	22 372	4 894.37	1 034	
	BUYING														
	TOTAL														
E. F. WOELFER & CO.	SELLING	(DESTROYED BY FIRE)													
	BUYING														
	TOTAL														
WOOD BROTHERS	SELLING	4 123	2 390.80	10 646	6 475.60	4 709	3 265.20	1 104	360.30	573	85.10	15 764	3 201.65	28 671	2
	BUYING														
	TOTAL														
GLEN K. WOOD & CO. (APRIL DESTROYED BY FIRE)	SELLING	56	29.55	118	69.35	39	29.00	28	9.15	19	2.85	1 110	252.20	-	
	BUYING														
	TOTAL														
WILL C. WOOD & CO. (APRIL DESTROYED BY FIRE.)	SELLING	23	13.15	137	85.30	68	51.25	54	21.00	51	7.65	3 110	683.10	302	
	BUYING														
	TOTAL														
	SELLING	16	8.80	37	23.35	1	.75								

SWINEY BROTHERS	SELLING	1 191	649.55	3 029	1 915.65	846	628.80	975	330.60	638	48.85	38 005	7 861.14	488
	BUYING													
	TOTAL													
UNITED COM. CO.	SELLING	(DESTROYED BY THE FIRE)												
	BUYING													
	TOTAL													
GEORGE W. VON BERNER	SELLING	(DESTROYED BY THE FIRE)												
	BUYING													
	TOTAL													
DAVID C. WAGNER	SELLING	16	8.80	51	34.15	61	42.90	2	.60	106	13.25	2 611	449.30	9
(APRIL DESTROYED BY FIRE)	BUYING													
	TOTAL													
WALTER BROTHERS	SELLING	315	163.15	652	409.80	131	92.25	55	16.50	9	1.35	919	181.30	253
	BUYING													
	TOTAL													
WALTERS & DUNBAR	SELLING	4 135	2 172.50	12 687	7 826.15	5 956	4 156.35	1 142	364.65	3 133	234.35	28 057	5 675.00	4 177
	BUYING													
	TOTAL													
L. B. WERDEN	SELLING	164	90.20	551	354.85	169	133.75	24	7.50	35	5.25	943	226.20	-
	BUYING													
	TOTAL													
W. W. WILSON & COMPANY	SELLING	2 136	1 221.65	5 379	3 518.40	1 436	1 088.75	2 234	707.55	653	102.00	22 372	4 894.37	1 034
	BUYING													
	TOTAL													
E. F. WOELFER & CO.	SELLING	(DESTROYED BY FIRE)												
	BUYING													
	TOTAL													
WOOD BROTHERS	SELLING	4 123	2 390.80	10 646	6 475.60	4 709	3 265.20	1 104	360.30	573	85.10	15 764	3 201.65	28 671
	BUYING													
	TOTAL													
GLEN K. WOOD & CO.	SELLING	56	29.55	118	69.35	39	29.00	28	9.15	19	2.85	1 110	252.20	-
(APRIL DESTROYED BY FIRE)	BUYING													
	TOTAL													
WILL C. WOOD & CO.	SELLING	23	13.15	137	85.30	68	51.25	54	21.00	51	7.65	3 110	683.10	302
(APRIL DESTROYED BY FIRE)	BUYING													
	TOTAL													
W. E. YOUNG	SELLING	16	8.80	37	23.35	1	.75	-	-	16	2.40	92	21.50	1
(APRIL DESTROYED BY FIRE)	BUYING													
	TOTAL													
CHAS. L. WILLS & CO.	SELLING	(DESTROYED BY THE FIRE)												
	BUYING													
	TOTAL													
H. O. THOMPSON & COMPANY	SELLING	279	155.15	849	542.95	174	141.90	182	61.20	58	8.70	4 285	938.35	34
(MAR. & APR. DESTROYED)	BUYING													
	TOTAL													

DUCED BY PETITIONERS DURING THE FOUR MONTHS ENDED APRIL 30, 1934
instances where the records were destroyed in the fire)
UNDER SECRETARY'S RATES AS COMPARED WITH THE PRESENT COMMISSIONS

SCHEDULE NO. 2

D	SECRETARY'S COMMISSIONS								PRESENT COMMISSIONS				DIFFERENCE			
	SWINE				SHEEP		EXTRA CHARGES			EXTRA CHARGES						
	PIGS		HOGS				FOR	CHECKS	TOTAL	REGULAR	FOR	PRORATING	TOTAL	PRESENT OVER	PRESENT UNDER	NET	PERCENT OF
	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	DRAFTS	& A/S		COMMS	DRAFTS	& A/S		SECY.	SECY.	REDUCTION	REDUCTION
	2 331	226.25	30 248	6 066.14	1 578	223.42	167.70	–	18 061.76	23 212.78	172.60	–	23 385.38	5 369.85	46.23		
									108.50				108.50				
									18 170.26				23 493.88			5 323.62	22.65
	638	48.85	38 005	7 861.14	488	88.92	140.35	82.70	11 746.56	13 795.06	232.80	309.75	14 337.61	2 744.85	153.80		
									35.90				35.90				
									11 782.46				14 373.51			2 591.05	18.03
	106	13.25	2 611	449.30	9	2.40	10.95	.50	562.85	691.90	7.00	6.00	704.90	146.68	4.63		
									NONE				NONE				
									562.85				704.90			142.05	20.1
	9	1.35	919	181.30	253	26.51	24.05	.30	915.21	1 125.39	21.15	6.10	1 152.64	242.93	5.50		
									NONE				NONE				
									915.21				1 152.64			237.43	20.59
	3 133	234.35	28 057	5 675.00	4 177	354.60	211.05	45.80	21 040.45	26 535.10	174.05	96.75	26 805.90	5 849.05	83.60		
									176.00				176.00				
									21 216.45				26 981.90			5 765.45	21.37
	35	5.25	943	226.20	–	–	–	.35	818.10	1 096.45	–	–	1 096.45	282.95	4.60		
									NONE				NONE				
									818.10				1 096.45			278.35	25.39
	653	102.00	22 372	4 894.37	1 034	192.59	169.35	.30	11 894.96	14 368.43	250.35	194.02	14 812.80	3 067.39	149.55		
									20.50				20.50				
									11 915.46				14 833.30			2 917.84	19.67
	573	85.10	15 764	3 201.65	28 671	2 132.96	193.80	63.95	18 169.36	22 754.81	163.75	146.40	23 064.96	4 990.60	95.00		
									51.30				51.30				
									18 220.66				23 116.26			4 895.60	21.18
	19	2.85	1 110	252.20	–	–	3.00	–	395.10	473.25	6.90	14.65	494.80	100.70	1.00		
									NONE				NONE				
									395.10				494.80			99.70	20.14
	51	7.65	3 110	683.10	302	28.16	3.90	–	893.51	971.30	19.05	61.80	1 052.75	187.04	27.80		
									NONE				NONE				
									893.51				1 052.75			159.24	15.12
			93	21.50	1	.35	.45	–	57.60	77.05	.45	–	77.50	19.90	–		

	48.65	38 005	7 861.14	488	88.92	140.35	82.70	11 746.56 35.90 11 782.46	13 795.06	232.80	309.75	14 337.61 35.90 14 373.51	2 744.85	153.80	2 591.05	18.03
106	13.25	2 611	449.30	9	2.40	10.95	.50	562.85 NONE 562.85	691.90	7.00	6.00	704.90 NONE 704.90	146.68	4.63	142.05	20.15
9	1.35	919	181.30	253	26.51	24.05	.30	915.21 NONE 915.21	1 125.39	21.15	6.10	1 152.64 NONE 1 152.64	242.93	5.50	237.43	20.59
3 133	234.35	28 057	5 675.00	4 177	354.60	211.05	45.80	21 040.45 176.00 21 216.45	26 535.10	174.05	96.75	26 805.90 176.00 26 981.90	5 849.05	83.60	5 765.45	21.37
35	5.25	943	226.20	–	–	–	.35	818.10 NONE 818.10	1 096.45	–	–	1 096.45 NONE 1 096.45	282.95	4.60	278.35	25.39
653	102.00	22 372	4 894.37	1 034	192.59	169.35	.30	11 894.96 20.50 11 915.46	14 368.43	250.35	194.02	14 812.80 20.50 14 833.30	3 067.39	149.55	2 917.84	19.67
573	85.10	15 764	3 201.65	28 671	2 132.96	193.80	63.95	18 169.36 51.30 18 220.66	22 754.81	163.75	146.40	23 064.96 51.30 23 116.26	4 990.60	95.00	4 895.60	21.18
19	2.85	1 110	252.20	–	–	3.00	–	395.10 NONE 395.10	473.25	6.90	14.65	494.80 NONE 494.80	100.70	1.00	99.70	20.14
51	7.65	3 110	683.10	302	28.16	3.90	–	893.51 NONE 893.51	971.90	19.05	61.80	1 052.75 NONE 1 052.75	187.04	27.80	159.24	15.12
16	2.40	92	21.50	1	.35	.45	–	57.60 NONE 57.60	77.05	.45	–	77.50 NONE 77.50	19.90	–	19.90	25.68
58	8.70	4 285	938.35	34	8.75	13.65	–	1 870.65 NONE 1 870.65	2 317.30	19.75	59.95	2 397.00 NONE 2 397.00	538.80	12.45	526.35	21.96

VOLUME OF LIVESTOCK HANDLED BY PETITIONERS DURING THE
(Except in instances where records were de
SHOWING THE COMMISSIONS UNDER SECRETARY'S RATES AS CO

NAME OF FIRM	SERVICE	ANALYSIS OF CONSIGNMENTS AND SECRETARY'S COM												S
		CATTLE						CALVES		SWINE				
		LIGHT		MEDIUM		HEAVY				PIGS		HOGS		
		HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HEAD	COMMS	HE
QUINN COM. COMPANY (MAR. & APR. DESTROYED)	SELLING BUYING TOTAL	653	339.15	3 083	1 823.35	300	224.05	401	119.20	92	9.75	2 070	459.65	
HALPIN LIVE STOCK COM. CO. (MARCH ONLY)	SELLING BUYING TOTAL	194	106.10	308	198.35	103	73.00	168	48.10	1	.15	201	47.55	
SHOTT L. S. COM. CO.	SELLING BUYING TOTAL	159	88.95	133	90.75	105	74.15	265	86.60	242	33.05	12 033	2 316.77	
ALL FIRMS	SELLING BUYING TOTAL	120 502	3965.81	315 652	192811.12	132 685	92784.73	95 128	28671.64	40 456	4 940.89	908 242	88952.28	571

BY PETITIONERS DURING THE FOUR MONTHS ENDED APRIL 30, 1934
nces where records were destroyed in the fire)
R SECRETARY'S RATES AS COMPARED WITH THE PRESENT COMMISSIONS

SCHEDULE NO. 2

SECRETARY'S COMMISSIONS								PRESENT COMMISSIONS				DIFFERENCE			
SWINE			SHEEP		EXTRA CHARGES		TOTAL	REGULAR COMMS	EXTRA CHARGES		TOTAL	PRESENT OVER SECY.	PRESENT UNDER SECY.	NET REDUCTION	PERCENT OF REDUCTION
	HOGS				FOR DRAFTS	CHECKS & A/S			FOR DRAFTS	PRORATING & A/S					
COMMS	HEAD	COMMS	HEAD	COMMS											
9.75	2 070	459.65	8	2.50	84.90	-	3 062.55	3 693.35	63.80	32.10	3 789.25	732.85	6.15		
							NONE				NONE				
							3 062.55				3 789.25			726.70	19.16
.15	201	47.55	-	-	21.30	-	494.55	609.90	18.75	2.25	630.90	137.00	.65		
							NONE				NONE				
							494.55				630.90			136.35	21.61
33.05	12 033	2 316.77	39	8.95	20.85	3.20	2 723.27	3 170.22	29.55	101.90	3 301.67	651.82	73.42		
							NONE				NONE				
							2 723.27				3 301.67			578.40	17.52
940.89	908 242	88952.28	571 532	42952.00	7746.90	815.90	623 641.27	775 637.62	6 401.92	6 269.36	788 306.90	169743.88	5 076.25		
							8 103.55				8 103.55				
							631 744.82				796 412.45			164667.63	20.88

IN THE DISTRICT COURT OF
FOR THE NORTHERN DISTRICT OF
EQUITY NO

STATEMENT OF COMMISSIONS,

UNDER PRESENT COMMISSION RATES, AS COMPARED WITH T

NOTE:- The 1934 figures cover Jany. Feby. Mar. & Apr. unless otherwise indicated.

FIRM NO.	NAME OF FIRM	YEAR	NUMBER OF HEAD	COMMISSIONS					COSTS				APPR ADJ MEN
				ACTUAL		% OF ACTUAL	SECRETARY'S ORDER		EXCLUDING APPRAISALS				
				TOTAL	PER HEAD		TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL	PER HEAD	
1	STRADER BROTHERS	1932	5 272	$ 1 817	.3446	79.32	$ 1 441	2 734	$ 963	$ 962	$ 1 925	.3651	$ 1
		1933	(DECEASED)										
		1934	(DECEASED)										
2	ADAMS, CORRICK & HATCH	1932	72 209	25 534	.3536	76.94	19 646	.2721	10 566	15 663	26 229	.3632	1
		1933	68 906	23 803	.3454	76.94	18 314	.2658	10 930	12 873	23 803	.3454	1
		1934	20 984	8 267	.3942	76.94	6 364	.3033	3 669	4 598	8 267	.3940	
3	ADLER SONS & CO.	1932	11 704	5 125	.4379	77.35	3 964	.3387	3 313	2 224	5 537	.4731	1
		1933	14 226	5 936	.4173	77.35	4 591	.3227	3 230	2 706	5 936	.4173	1
		1934	(INCLUDED IN SWANSON, GILMORE & CASTENHOLTZ)										
4	ALEXANDER CONOVER CO.	1932	384 023	143 814	.3745	79.91	114 922	.2993	28 398	89 678	118 076	.3075	9
		1933	284 103	125 292	.4410	79.91	100 121	.3524	30 398	86 958	117 356	.4131	9
		1934	155 002	45 951	.2965	79.91	36 719	.2369	9 400	28 709	38 109	.2459	3
5	LOUIS ARMBRECHT COM. CO.	1932	3 966	2 067	.5212	73.02	1 509	.3805	1 055	1 119	2 174	.5482	
		1933	3 085	1 288	.4175	73.02	941	.3050	650	638	1 288	.4169	
		1934	1 112	520	.4676	73.02	380	.3417	279	241	520	.4676	
6	BAKER, HEYNE & CO.	1932	116 027	41 262	.3556	84.37	34 813	.3000	17 094	27 307	44 401	.3827	6
		1933	112 764	43 506	.3856	84.37	36 706	.3255	13 530	28 289	41 819	.3709	6
		1934	36 075	13 571	.3762	84.37	11 450	.3174	4 600	7 865	12 465	.3455	2
7	SULLIVAN COM. CO.	1932	696	249	.3567	79.32	198	.2837	139	122	261	.3739	
		1933	(DECEASED)										
		1934	(DECEASED)										
8	BARTON, LOONEY & CO.	1932	25 636	12 758	.4977	76.78	9 796	.3821	7 905	5 701	13 606	.5307	2
		1933	22 983	13 030	.5669	76.78	10 004	.4353	8 554	4 476	13 030	.5670	2
		1934	8 428	4 841	.5744	76.78	3 717	.4410	2 620	740	3 360	.3987	
9	BENTON & CO.	1932	21 974	7 134	.3246	78.86	5 626	.2560	4 908	2 658	7 566	.3443	1
		1933	28 615	9 704	.3391	78.86	7 653	.2674	4 776	4 928	9 704	.3391	1
		1934	10 966	3 729	.3401	78.86	2 941	.2682	1 974	1 756	3 729	.3401	
	BOWLES L. S. COM. CO.	1932	274 211	73 926	.2696	79.32	58 638	.2138	28 597	49 874	78 471	.2862	4
		1933	(DESTROYED BY FIRE)										
		1934	(DESTROYED BY FIRE)										
	SWANSON, GILMORE & CASTENHOLZ	1932	174 725	71 167	.4073	77.35	55 048	.3151	18 240	55 430	73 670	.4216	10
		1933	183 692	82 462	.4489	77.35	63 784	.3472	18 240	54 698	72 938	.3971	10
		1934	49 033	23 243	.4740	77.35	17 978	.3667	4 800	14 378			

			HEAD			% OF			OWNERS'	OTHER	TOTAL		MER
				TOTAL	PER HEAD	ACTUAL	TOTAL	PER HEAD	SALARIES	SALY & EXPS	TOTAL	PER HEAD	
1	STRADER BROTHERS	1932	5 272	$ 1 817	.3446	79.32	$ 1 441	2 734	$ 963	$ 962	$ 1 925	.3651	$ 1
		1933	(DECEASED)										
		1934	(DECEASED)										
2	ADAMS, CORRICK & HATCH	1932	72 209	25 534	.3536	76.94	19 646	.2721	10 566	15 663	26 229	.3632	1
		1933	68 906	23 803	.3454	76.94	18 314	.2658	10 930	12 873	23 803	.3454	1
		1934	20 984	8 267	.3942	76.94	6 364	.3033	3 669	4 598	8 267	.3940	
3	ADLER SONS & CO.	1932	11 704	5 125	.4379	77.35	3 964	.3387	3 313	2 224	5 537	.4731	1
		1933	14 226	5 936	.4173	77.35	4 591	.3227	3 230	2 706	5 936	.4173	1
		1934	(INCLUDED IN SWANSON, GILMORE & CASTENHOLTZ)										
4	ALEXANDER CONOVER CO.	1932	384 023	143 814	.3745	79.91	114 922	.2993	28 398	89 678	118 076	.3075	9
		1933	284 103	125 292	.4410	79.91	100 121	.3524	30 398	86 958	117 356	.4131	9
		1934	155 002	45 951	.2965	79.91	36 719	.2369	9 400	28 709	38 109	.2459	3
5	LOUIS ARMBRECHT COM. CO.	1932	3 966	2 067	.5212	73.02	1 509	.3805	1 055	1 119	2 174	.5482	
		1933	3 085	1 288	.4175	73.02	941	.3050	650	638	1 288	.4169	
		1934	1 112	520	.4676	73.02	380	.3417	279	241	520	.4676	
6	BAKER, HEYNE & CO.	1932	116 027	41 262	.3556	84.37	34 813	.3000	17 094	27 307	44 401	.3827	6
		1933	112 764	43 506	.3856	84.37	36 706	.3255	13 530	28 289	41 819	.3709	6
		1934	36 075	13 571	.3762	84.37	11 450	.3174	4 600	7 865	12 465	.3455	2
7	SULLIVAN COM. CO.	1932	696	249	.3567	79.32	198	.2837	139	122	261	.3739	
		1933	(DECEASED)										
		1934	(DECEASED)										
8	BARTON, LOONEY & CO.	1932	25 636	12 758	.4977	76.78	9 796	.3821	7 905	5 701	13 606	.5307	2
		1933	22 983	13 030	.5669	76.78	10 004	.4353	8 554	4 476	13 030	.5670	2
		1934	8 428	4 841	.5744	76.78	3 717	.4410	2 620	740	3 360	.3987	
9	BENTON & CO.	1932	21 974	7 134	.3246	78.86	5 626	.2560	4 908	2 658	7 566	.3443	1
		1933	28 615	9 704	.3391	78.86	7 653	.2674	4 776	4 928	9 704	.3391	1
		1934	10 966	3 729	.3401	78.86	2 941	.2682	1 974	1 756	3 729	.3401	
	BOWLES L. S. COM. CO.	1932	274 211	73 926	.2696	79.32	58 638	.2138	28 597	49 874	78 471	.2862	4
		1933	(DESTROYED BY FIRE)										
		1934	(DESTROYED BY FIRE)										
11	SWANSON, GILMORE & CASTENHOLZ	1932	174 725	71 167	.4073	77.35	55 048	.3151	18 240	55 430	73 670	.4216	10
		1933	183 692	82 462	.4489	77.35	63 784	.3472	18 240	54 698	72 938	.3971	10
		1934	49 033	23 243	.4740	77.35	17 978	.3667	4 800	14 378	19 178	.3911	2
12	ABE BURNETT & CO.	1932	19 657	8 641	.4396	75.64	6 536	.3325	35	8 174	8 809	.4481	2
		1933	(DESTROYED BY FIRE)										
		1934	6 533	2 833	.4336	75.64	2 143	.3280	282	2 740	3 022	.4626	
13	BYERS BROTHERS & CO.	1932	16 345	5 691	.3482	79.32	4 514	2 762	1 544	7 310	8 854	.5417	3
		1933	(OUT OF BUSINESS)										
		1934	(OUT OF BUSINESS)										
14	CALLAHAN L. S. COM. CO.	1932	14 286	3 036	.2125	79.32	2 408	.1686	1 897	1 251	3 148	.2203	1
		1933	7 090	1 280	.1805	79.32	1 015	.1432	752	528	1 280	.1805	1
		1934	2 291	415	.1811	79.32	329	.1436	270	145	415	.1811	

E DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,889

Petitioners' Exhibit No. 2
Witness, Earle D. Mudd.

MISSIONS, COSTS AND PROFIT OR LOSS

, AS COMPARED WITH RATES UNDER SECRETARY'S ORDER DATED MARCH 12, 1934

SCHEDULE NO. 7

COSTS					PROFIT OR LOSS											
ISALS	TOTAL		APRAISAL ADJUST-MENTS.	INCLUDING APPRAISALS		BASED ON PRESENT COMMS. EXCLUDING APPRAISALS			BASED ON PRESENT COMMS. INCLUDING APPRAISALS			BASED ON SECY'S COMMS. EXCLUDING APPRAISALS			BASED ON SECY'S COMMS. INCLUDING APPRAISALS		
TOTAL	PER HEAD		TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
$ 1 925	.3651	$ 1 437	$ 3 362	.6377	$ 108	.0205	5.61	$ 1 545	.2931	45.95	$ 484	.0918	25.14	$ 1 921	.3644	57.14
26 229	.3632	1 934	28 163	.3900	695	.0096	2.65	2 629	.0364	9.33	6 583	.0912	25.10	8 517	.1179	30.24
23 803	.3454	1 934	25 737	.3735	–	–	–	1 934	.0281	7.51	5 489	.0797	23.06	7 423	.1077	28.84
8 267	.3940	645	8 912	.4247	–	–	–	645	.0307	7.24	1 903	.0907	23.02	2 548	.1214	28.59
5 537	.4731	1 438	4 099	.3502	412	.0352	7.44	1 026	.0877	25.03	1 573	.1344	28.41	135	.0115	3.29
5 936	.4173	1 438	4 498	.3162	–	–	–	1 438	.1011	31.97	1 345	.0945	22.66	93	.0065	2.07
118 076	.3075	9 352	127 428	.3318	25 738	.0670	21.80	16 386	.0427	12.86	3 154	.0082	2.67	12 506	.0326	9.81
117 356	.4131	9 352	126 708	.4460	7 936	.0279	6.76	1 416	.0050	1.12	17 235	.0607	14.69	26 587	.0936	20.98
38 109	.2459	3 117	41 226	.2660	7 842	.0506	20.58	4 725	.0305	11.46	1 390	.0090	3.65	4 507	.0291	10.93
2 174	.5482	445	2 619	.6604	107	.0270	4.92	552	.1392	21.08	665	.1677	30.59	1 110	.2799	42.38
1 288	.4169	445	1 733	.5611	–	–	–	443	.1436	25.59	347	.1125	26.94	790	.2561	45.64
520	.4676	148	668	.6007	–	–	–	148	.1331	22.16	140	.1259	26.92	288	.2590	43.11
44 401	.3827	6 406	50 807	.4379	3 139	.0271	7.07	9 545	.0823	18.79	9 588	.0826	21.59	15 994	.1378	31.48
41 819	.3709	6 406	48 225	.4277	1 687	.0150	4.03	4 719	.0418	9.79	5 113	.0453	12.23	11 519	.1022	23.89
12 465	.3455	2 135	14 600	.4047	1 106	.0307	8.87	1 029	.0285	7.05	1 015	.0281	8.14	3 150	.0873	21.58
261	.3739	299	560	.6023	12	.0172	4.60	311	.4456	55.46	63	.0903	24.14	362	.5186	64.64
13 606	.5307	2 095	15 701	.6125	848	.0330	6.23	2 943	.1148	18.74	3 810	.1486	28.00	5 905	.2303	37.61
13 030	.5670	2 095	15 125	.6581	–	–	–	2 096	.0912	13.86	3 026	.1317	23.22	5 122	.2229	33.86
3 360	.3987	698	4 058	.4815	1 481	.1757	44.08	783	.0929	19.30	357	.0424	10.63	341	.0405	8.40
7 566	.3443	1 908	5 658	.2575	432	.0197	5.71	1 476	.0671	26.09	1 940	.0883	25.64	32	.0015	.57
9 704	.3391	1 908	7 796	.2724	–	–	–	1 909	.0667	24.49	2 051	.0717	21.14	142	.0050	1.82
3 729	.3401	636	3 093	.2821	–	–	–	635	.0579	20.52	788	.0719	21.13	153	.0140	4.95
78 471	.2862	4 253	82 724	.3017	4 545	.0166	5.79	8 798	.0321	10.64	19 833	.0723	25.27	24 086	.0878	29.12
73 670	.4216	10 260	83 930	.4804	2 503	.0143	3.40	12 763	.0731	15.21	18 622	.1066	25.28	28 882	.1653	34.41
72 938	.3971	10 260	83 198	.4529	9 524	.0518	13.06	736	.0040	.88	9 154	.0498	12.55	19 414	.1057	23.33
[illegible]	[illegible]	2 565	21 743	.4134	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

$ 1 925	.3651	$ 1 437	$ 3 362	.6377	$ 108	.0205	5.61	$ 1 545	.2931	45.95	$ 484	.0918	25.14	$ 1 921	.3644	57.14
26 229	.3632	1 934	28 163	.3900	695	.0096	2.65	2 629	.0364	9.33	6 583	.0912	25.10	8 517	.1179	30.24
23 803	.3454	1 934	25 737	.3735	–	–	–	1 934	.0281	7.51	5 489	.0797	23.06	7 423	.1077	28.84
8 267	.3940	645	8 912	.4247	–	–	–	645	.0307	7.24	1 903	.0907	23.02	2 548	.1214	28.59
5 537	.4731	1 438	4 099	.3502	412	.0352	7.44	1 026	.0877	25.03	1 573	.1344	28.41	135	.0115	3.29
5 936	.4173	1 438	4 498	.3162	–	–	–	1 438	.1011	31.97	1 345	.0945	22.66	93	.0065	2.07
118 076	.3075	9 352	127 428	.3318	25 738	.0670	21.80	16 386	.0427	12.86	3 154	.0082	2.67	12 506	.0326	9.81
117 356	.4131	9 352	126 708	.4460	7 936	.0279	6.76	1 416	.0050	1.12	17 235	.0607	14.69	26 587	.0936	20.98
38 109	.2459	3 117	41 226	.2660	7 842	.0506	20.58	4 725	.0305	11.46	1 390	.0090	3.65	4 507	.0291	10.93
2 174	.5482	445	2 619	.6604	107	.0270	4.92	552	.1392	21.08	665	.1677	30.59	1 110	.2799	42.38
1 288	.4169	445	1 733	.5611	–	–	–	443	.1436	25.55	347	.1125	26.94	790	.2561	45.64
520	.4676	148	668	.6007	–	–	–	148	.1331	22.16	140	.1259	26.92	288	.2590	43.11
44 401	.3827	6 406	50 807	.4379	3 139	.0271	7.07	9 545	.0823	18.79	9 588	.0826	21.59	15 994	.1378	31.48
41 819	.3709	6 406	48 225	.4277	1 687	.0150	4.03	4 719	.0418	9.79	5 113	.0453	12.23	11 519	.1022	23.89
12 465	.3455	2 135	14 600	.4047	1 106	.0307	8.87	1 029	.0285	7.05	1 015	.0281	8.14	3 150	.0873	21.58
261	.3739	299	560	.8023	12	.0172	4.60	311	.4456	55.46	63	.0903	24.14	362	.5186	64.64
13 606	.5307	2 095	15 701	.6125	848	.0330	6.23	2 943	.1148	18.74	3 810	.1486	28.00	5 905	.2303	37.61
13 030	.5670	2 095	15 125	.6581	–	–	–	2 096	.0912	13.86	3 026	.1317	23.22	5 122	.2229	33.86
3 360	.3987	698	4 058	.4815	1 481	.1757	44.08	783	.0929	19.30	357	.0424	10.63	341	.0405	8.40
7 566	.3443	1 908	5 658	.2575	432	.0197	5.71	1 476	.0671	26.09	1 940	.0883	25.64	32	.0015	.57
9 704	.3391	1 908	7 796	.2724	–	–	–	1 909	.0667	24.49	2 051	.0717	21.14	142	.0050	1.82
3 729	.3401	636	3 093	.2821	–	–	–	635	.0579	20.52	788	.0719	21.13	153	.0140	4.95
78 471	.2862	4 253	82 724	.3017	4 545	.0166	5.79	8 798	.0321	10.64	19 833	.0723	25.27	24 086	.0878	29.12
73 670	.4216	10 260	83 930	.4804	2 503	.0143	3.40	12 763	.0731	15.21	18 622	.1066	25.28	28 882	.1653	34.41
72 938	.3971	10 260	83 198	.4529	9 524	.0518	13.06	736	.0040	.88	9 154	.0498	12.55	19 414	.1057	23.33
19 178	.3911	2 565	21 743	.4434	4 065	.0829	21.20	1 500	.0306	6.90	1 200	.0245	6.26	3 765	.0768	17.32
8 809	.4481	2 965	11 774	.5990	168	.0085	1.91	3 133	.1594	26.61	2 273	.1156	25.80	5 238	.2665	44.49
3 022	.4626	988	4 010	.6138	189	.0289	6.25	1 177	.1802	29.35	879	.1345	29.09	1 867	.2858	46.56
8 854	.5417	3 476	12 330	.7544	3 163	.1935	35.72	6 639	.4062	53.84	4 340	.2655	49.02	7 816	.4782	63.39
3 148	.2203	1 103	4 251	.2976	112	.0078	3.56	1 215	.0851	28.58	740	.0518	23.51	1 843	.1290	43.35
1 280	.1805	1 103	2 383	.3361	–	–	–	1 103	.1556	46.29	265	.0374	20.70	1 368	.1929	57.41
415	.1611	276	691	.3016	–	–	–	276	.1205	39.94	86	.0375	20.72	362	.1580	52.39

IN THE DISTRICT COURT O
FOR THE NORTHERN DISTRICT O
EQUITY

STATEMENT OF COMMISSIONS C O

UNDER PRESENT COMMISSION RATES, AS COMPARED WITH RA

NOTE:- The 1934 figures cover Jany. Feby. Mar. & Apr. unless otherwise indicated

FIRM NO.	NAME OF FIRM	YEAR	NUMBER OF HEAD	COMMISSIONS					COSTS				APP
				ACTUAL		SECRETARY'S ORDER			EXCLUDING APPRAISALS				
				TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL		AD MC
											TOTAL	PER HEAD	
15	HARRY L. CARPENTER	1932	15 008	4 131	.2752	79.32	3 277	.2184	2 043	2 221	4 264	.2841	
		1933	19 329	5 475	.2833	79.32	4 342	.2246	2 658	2 817	5 475	.2833	
		1934	6 783	1 898	.2798	79.32	1 505	.2219	950	948	1 898	.1001	
16	CENTRAL L. S. COM. CO.	1932	85 319	32 138	.3767	84.58	27 182	.3186	3 923	31 917	35 840	.420:	11
		1933	56 091	27 457	.4895	84.58	23 223	.4140	6 211	22 097	28 308	.5047	11
		1934	16 096	8 594	.5339	84.58	7 269	.4516	3 219	6 561	9 780	.6076	3
17	CLARK BOWLES & CO.	1932	3 201	956	.2987	79.32	758	.2368	552	1 892	2 444	.7635	
		1933	3 809	3 212	.8433	79.32	2 548	.6689	1 394	3 713	5 107	1.3408	
		1934	(DESTROYED BY FIRE)										
18	JOHN CLAY & CO.	1932	782 239	179 580	.2296	77.21	138 654	.1773	–	141 612	141 612	.1810	-
		1933	873 558	188 122	.2154	77.21	145 249	.1663	–	129 126	129 126	.1478	-
		1934	282 242	60 757	.2153	77.21	46 910	.1662	–	48 260	48 260	.1710	-
19	COCHRAN, HENNEBERRY & WALLACE	1932	135 485	46 194	.3410	78.88	36 438	.2689	15 902	31 481	47 383	.3498	14
		1933	150 201	46 288	.3082	78.88	36 512	.2431	16 128	30 160	46 288	.3082	14
		1934	39 817	15 726	.3950	78.88	12 405	.3116	6 111	9 615	15 726	.3950	4
20	CONKLIN BROS. COM. CO.	1932	148 024	57 762	.3902	79.41	45 869	.3099	8 000	52 295	60 295	.4073	7
		1933	154 506	56 037	.3627	79.41	44 499	.2880	7 333	43 376	50 709	.3282	7
		1934	48 952	20 974	.4285	79.41	16 655	.3402	2 400	13 796	16 196	.3309	2
21	H. D. COPELAND & CO.	1932	177 252	63 721	.3595	79.32	50 543	.3067	22 044	40 840	62 884	.3548	10
		1933	164 609	66,285	.4022	79.32	52 577	.3190	26 294	36 706	63 000	.3823	10
		1934	(DESTROYED BY FIRE)										
22	SWINEY BROTHERS	1932	146 529	42 828	.2923	81.97	35 106	.2396	17 280	25 492	42 772	.2919	9
		1933	134 011	39 638	.2958	81.97	32 491	.2425	15 945	23 693	39 638	.2958	9
		1934	44 711	13 971	.3125	81.97	11 452	.2561	6 882	7 089	13 971	.3125	3
23	DOLAN LUDEMAN & CO.	1932	122 792	46 258	.3767	79.32	36 692	.2988	16 832	31 877	48 709	.3967	8
		1933	119 092	57 425	.4822	79.32	45 550	.3825	14 350	41 683	56 033	.4705	4
		1934	(DESTROYED BY FIRE)										
24	DROVERS COM. CO.	1932	105 187	45 385	.4315	80.66	36 608	.3480	10 800	32 270	43 070	.4095	8
		1933	116 665	50 098	.4294	80.66	40 409	.3464	9 600	31 119	40 719	.3490	8
		1934	43 585	21 327	.4893	80.66	17 202	.3947	4 000	13 846	17 846	.4095	1
25	DUNBAR, ST. JOHN CO.	1932											
		1933	(INCLUDED IN COPELAND & CO.)										
		1934											

No.			HEAD	TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS.	TOTAL TOTAL	TOTAL PER HEAD	ADJUSTMENTS
15	HARRY L. CARPENTER	1932	15 008	4 131	.2752	79.32	3 277	.2184	2 043	2 221	4 264	.2841	56
		1933	19 329	5 475	.2833	79.32	4 342	.2246	2 658	2 817	5 475	.2833	56
		1934	6 783	1 898	.2798	79.32	1 505	.2219	950	948	1 898	.1081	14
16	CENTRAL L. S. COM. CO.	1932	85 319	32 138	.3767	84.58	27 182	.3186	3 923	31 917	35 840	.4201	11 297
		1933	56 091	27 457	.4895	84.58	23 223	.4140	6 211	22 097	28 308	.5047	11 297
		1934	16 096	8 594	.5339	84.58	7 269	.4516	3 219	6 561	9 780	.6076	3 765
17	CLARK BOWLES & CO.	1932	3 201	956	.2987	79.32	758	.2368	552	1 892	2 444	.7635	348
		1933	3 809	3 212	.8433	79.32	2 548	.6689	1 394	3 713	5 107	1.3408	348
		1934	(DESTROYED BY FIRE)										
18	JOHN CLAY & CO.	1932	782 239	179 580	.2296	77.21	138 654	.1773	—	141 612	141 612	.1810	—
		1933	873 558	188 122	.2154	77.21	145 249	.1663	—	129 126	129 126	.1478	—
		1934	282 242	60 757	.2153	77.21	46 910	.1662	—	48 260	48 260	.1710	—
19	COCHRAN, HENNEBERRY & WALLACE	1932	135 485	46 194	.3410	78.88	36 438	.2689	15 902	31 481	47 383	.3498	14 098
		1933	150 201	46 288	.3082	78.88	36 512	.2431	16 128	30 160	46 288	.3082	14 098
		1934	39 817	15 726	.3950	78.88	12 405	.3116	6 111	9 615	15 726	.3950	4 699
20	CONKLIN BROS. COM. CO.	1932	148 024	57 762	.3902	79.41	45 869	.3099	8 000	52 295	60 295	.4073	7 000
		1933	154 506	56 037	.3627	79.41	44 499	.2880	7 333	43 376	50 709	.3282	7 000
		1934	48 952	20 974	.4285	79.41	16 655	.3402	2 400	13 796	16 196	.3309	2 333
21	H. D. COPELAND & CO.	1932	177 252	63 721	.3595	79.32	50 543	.3067	22 044	40 840	62 884	.3548	10 406
		1933	164 609	66 285	.4022	79.32	52 577	.3190	26 294	36 706	63 000	.3823	10 406
		1934	(DESTROYED BY FIRE)										
22	SWINEY BROTHERS	1932	146 529	42 828	.2923	81.97	35 106	.2396	17 280	25 492	42 772	.2919	9 720
		1933	134 011	39 638	.2958	81.97	32 491	.2425	15 945	23 693	39 638	.2958	9 720
		1934	44 711	13 971	.3125	81.97	11 452	.2561	6 882	7 089	13 971	.3125	3 237
23	DOLAN LUDEMAN & CO.	1932	122 792	46 258	.3767	79.32	36 692	.2988	16 832	31 877	48 709	.3967	8 488
		1933	119 092	57 425	.4822	79.32	45 550	.3825	14 350	41 683	56 033	.4705	4 916
		1934	(DESTROYED BY FIRE)										
24	DROVERS COM. CO.	1932	105 187	45 385	.4315	80.66	36 608	.3480	10 800	32 270	43 070	.4095	5 200
		1933	116 665	50 095	.4294	80.66	40 409	.3464	9 600	31 119	40 719	.3490	5 200
		1934	43 585	21 327	.4893	80.66	17 202	.3947	4 000	13 846	17 846	.4095	1 733
25	DUNBAR, ST. JOHN CO.	1932											
		1933	(INCLUDED IN COPELAND & CO.)										
		1934											
26	H. L. DUNNING & CO.	1932	68 494	24 965	.3645	79.60	19 872	.2901	4 310	22 686	26 996	.3942	2 590
		1933	57 216	21 537	.3764	79.60	17 143	.2996	4 211	16 917	21 128	.3693	2 590
		1934	13 571	6 665	.4911	79.60	5 305	.3909	1 035	5 602	6 637	.4891	865
27	H. O. THOMPSON & CO.	1932	28 917	10 328	.3572	78.04	8 060	.2787	5 917	4 593	10 510	.3635	1 080
		1933	24 418	9 725	.3983	78.04	7 589	.3108	4 031	5 694	9 725	.3983	1 080
	JAN. & FEB.	1934	5 861	2 397	.4090	78.04	1 871	.3192	1 097	1 300	2 397	.4090	180
28	ETTLINGER L. S. COM. CO.	1932	48 966	15 313	.3127	78.40	12 005	.2452	2 889	11 933	14 822	.3027	990
		1933	29 743	10 966	.3687	78.40	8 597	.2890	3 081	7 790	10 871	.3655	990
		1934	9 309	3 291	.3535	78.40	2 580	.2772	901	2 390	3 291	.3535	330

N THE DISTRICT COURT OF THE UNITED STATES
HE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,829

MISSIONS COSTS AND PROFIT OF LOSS

AS COMPARED WITH RATES UNDER SECRETARY'S ORDER DATED MARCH 12, 1934

SCHEDULE NO. 7

COSTS					PROFIT OR LOSS								
PPRAISALS		APPRAISAL ADJUST-MENTS	INCLUDING APPRAISALS		BASED ON PRESENT COMMS. EXCLUDING APPRAISALS			BASED ON PRESENT COMMS INCLUDING APPRAISALS			BASED ON SECY'S COMMS. EXCLUDING APPRAISALS			BASED ON SECY'S COMMS. INCLUDING APPRAISALS		
S TOTAL	PER HEAD		TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
4 264	.2841	56	4 320	.2878	133	.0089	3.12	189	.0126	4.38	987	.0658	23.15	1 043	.0695	24.14
5 475	.2833	56	5 531	.2862	–	–	–	56	.0029	1.01	1 133	.0586	20.69	1 189	.0615	21.50
1 898	.1001	14	1 912	.2822	–	–	–	14	.0020	.84	393	.0579	20.71	407	.0600	21.37
35 840	.4201	11 297	47 137	.5525	3 702	.0434	10.33	14 999	.1758	31.82	8 658	.1015	24.16	19 955	.2339	42.33
28 308	.5047	11 297	39 605	.7061	851	.0152	3.01	12 148	.2166	30.67	5 085	.0907	17.96	16 382	.2921	41.36
9 780	.6076	3 765	13 545	.8415	1 186	.0737	12.13	4 951	.3076	36.55	2 511	.1560	25.67	6 276	.3899	46.33
2 444	.7635	348	2 792	.8722	1 488	.4648	60.88	1 836	.5735	65.76	1 686	.5267	68.99	2 034	.6354	72.85
5 107	1.3408	348	5 455	1.4321	1 895	.4975	37.11	2 243	.5889	11.12	2 559	.6718	50.11	2 907	.7632	53.29
141 612	.1810	–	141 612	.1810	37 968	.0486	26.81	37 968	.0486	26.81	2 958	.0038	2.09	2 958	.0038	2.09
129 126	.1478	–	129 126	.1478	58 996	.0675	45.69	58 996	.0675	45.69	16 123	.0185	12.49	16 123	.0185	12.49
48 260	.1710	–	48 260	.1710	12 497	.0443	25.90	12 497	.0443	25.90	1 350	.0048	2.80	1 350	.0048	2.80
47 383	.3498	14 098	61 481	.4538	1 189	.0088	2.51	15 287	.1128	24.86	10 945	.0808	23.10	25 043	.1848	40.73
46 288	.3082	14 098	60 386	.4020	–	–	–	14 098	.0939	23.35	9 776	.0651	21.12	23 874	.1589	39.54
15 726	.3950	4 699	20 425	.5130	–	–	–	4 699	.1180	23.01	3 321	.0834	21.12	8 020	.2014	39.27
60 295	.4073	7 000	67 295	.4546	2 533	.0171	4.20	9 533	.0644	14.17	14 426	.0975	23.93	21 426	.1447	31.84
50 709	.3282	7 000	57 709	.3735	5 328	.0345	10.51	1 672	.0108	2.90	6 210	.0402	12.25	13 210	.0855	22.89
16 196	.3309	2 333	18 529	.3785	4 778	.0976	29.50	2 445	.0499	13.20	459	.0094	2.84	1 874	.0383	10.11
62 884	.3548	10 406	73 290	.4135	837	.0047	1.33	9 569	.0540	13.06	12 341	.0696	19.63	22 747	.1283	31.04
63 000	.3823	10 406	73 406	.4454	3 285	.0199	5.21	7 121	.0432	9.70	10 423	.0632	16.54	20 829	.1264	28.38
42 772	.2919	9 720	52 492	.3582	56	.0004	.13	9 664	.0659	18.41	7 666	.0523	17.92	17 386	.1187	33.12
39 638	.2958	9 720	49 358	.3683	–	–	–	9 720	.0725	19.69	7 147	.0533	16.03	16 867	.1259	34.17
13 971	.3125	3 237	17 208	.3849	–	–	–	3 237	.0724	18.81	2 519	.0563	16.03	5 756	.1287	33.45
48 709	.3967	8 488	57 197	.4658	2 451	.0200	5.03	10 939	.0891	19.13	12 017	.0979	24.67	20 505	.1670	35.85
56 033	.4705	4 916	60 949	.5118	1 392	.0117	2.48	3 524	.0296	5.78	10 483	.0880	18.71	15 399	.1293	25.27
43 070	.4095	5 200	48 270	.4589	2 315	.0220	5.37	2 885	.0274	5.98	6 462	.0614	15.00	11 662	.1109	24.16
40 719	.3490	5 200	45 919	.3936	9 379	.0804	23.03	4 179	.0358	9.10	310	.0053	.76	5 510	.0472	12.00
17 846	.4095	1 733	19 579	.4492	3 481	.0799	19.51	1 748	.0401	8.93	644	.0148	3.61	2 377	.0545	12.14

CEPS	TOTAL		AJUSTE-MENTS													
	TOTAL	PER HEAD		TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
2 221	4 264	.2841	56	4 320	.2878	133	.0089	3.12	189	.0126	4.38	987	.0658	23.15	1 043	.0695	24.14
2 817	5 475	.2833	56	5 531	.2862	–	–	–	56	.0029	1.01	1 133	.0586	20.69	1 189	.0615	21.50
948	1 898	.1001	14	1 912	.2832	–	–	–	14	.0020	.84	393	.0579	20.71	407	.0600	21.37
1 917	35 840	.4201	11 297	47 137	.5525	3 702	.0434	10.33	14 999	.1758	31.82	8 658	.1015	24.16	19 965	.2339	42.33
2 097	28 308	.5047	11 297	39 605	.7061	851	.0152	3.01	12 148	.2166	30.67	5 085	.0907	17.96	16 382	.2921	41.36
5 361	9 780	.6076	3 765	13 545	.8415	1 186	.0737	12.13	4 951	.3076	36.55	2 511	.1560	25.67	6 276	.3899	46.33
1 892	2 444	.7635	348	2 792	.8722	1 488	.4648	60.88	1 836	.5735	65.76	1 686	.5267	68.99	2 034	.6354	72.85
3 713	5 107	1.3408	348	5 455	1.4321	1 895	.4975	37.11	2 243	.5889	11.12	2 559	.6718	50.11	2 907	.7632	53.29
1 612	141 612	.1810	–	141 612	.1810	37 968	.0486	26.81	37 968	.0486	26.81	2 958	.0038	2.09	2 958	.0038	2.09
9 126	129 126	.1478	–	129 126	.1478	58 996	.0675	45.69	58 996	.0675	45.69	16 123	.0185	12.49	16 123	.0185	12.49
3 260	48 260	.1710	–	48 260	.1710	12 497	.0443	25.90	12 497	.0443	25.90	1 350	.0048	2.80	1 350	.0048	2.80
1 481	47 383	.3498	14 098	61 481	.4538	1 189	.0088	2.51	15 287	.1128	24.86	10 945	.0808	23.10	25 043	.1848	40.73
2 160	46 288	.3082	14 098	60 386	.4020	–	–	–	14 098	.0939	23.35	9 776	.0651	21.12	23 874	.1589	39.54
9 615	15 726	.3950	4 699	20 425	.5130	–	–	–	4 699	.1180	23.01	3 321	.0834	21.12	8 020	.2014	39.27
2 295	60 295	.4073	7 000	67 295	.4546	2 533	.0171	4.20	9 533	.0644	14.17	14 426	.0975	23.93	21 426	.1447	31.84
3 376	50 709	.3282	7 000	57 709	.3735	5 328	.0345	10.51	1 672	.0108	2.90	6 210	.0402	12.25	13 210	.0855	22.89
3 796	16 196	.3309	2 333	18 529	.3785	4 778	.0976	29.50	2 445	.0499	13.20	459	.0094	2.84	1 874	.0383	10.11
0 840	62 884	.3548	10 406	73 290	.4135	837	.0047	1.33	9 569	.0540	13.06	12 341	.0696	19.63	22 747	.1283	31.04
5 706	63 000	.3823	10 406	73 406	.4454	3 285	.0199	5.21	7 121	.0432	9.70	10 423	.0632	16.54	20 829	.1264	28.38
3 492	42 772	.2919	9 720	52 492	.3582	56	.0004	.13	9 664	.0659	18.41	7 666	.0523	17.92	17 386	.1187	33.12
1 693	39 638	.2958	9 720	49 358	.3683	–	–	–	9 720	.0725	19.69	7 147	.0533	16.03	16 867	.1259	34.17
7 089	13 971	.3125	3 237	17 208	.3849	–	–	–	3 237	.0724	18.81	2 519	.0563	18.03	5 756	.1287	33.45
877	48 709	.3967	8 488	57 197	.4658	2 451	.0200	5.03	10 939	.0891	19.13	12 017	.0979	24.67	20 505	.1670	35.85
603	56 033	.4705	4 916	60 949	.5118	1 392	.0117	2.48	3 524	.0296	5.78	10 483	.0880	18.71	15 399	.1293	25.27
2 270	43 070	.4095	5 200	48 270	.4589	2 315	.0220	5.37	2 885	.0274	5.98	6 462	.0614	15.00	11 662	.1109	24.16
119	40 719	.3490	5 200	45 919	.3936	9 379	.0804	23.03	4 179	.0358	9.10	310	.0053	.76	5 510	.0472	12.00
3	17 846	.4095	1 733	19 579	.4492	3 481	.0799	19.51	1 748	.0401	8.93	644	.0148	3.61	2 377	.0545	12.14
686	26 996	.3942	2 590	29 586	.4320	2 031	.0297	7.52	4 621	.0675	15.62	7 124	.1040	26.39	9 714	.1418	32.83
917	21 128	.3693	2 590	23 718	.4145	409	.0071	1.94	2 181	.0381	9.20	3 985	.0696	37.72	6 575	.1149	27.72
602	6 637	.4891	863	7 500	.5526	28	.0021	.42	835	.0615	11.13	1 332	.0982	20.07	2 195	.1617	29.27
593	10 510	.3635	1 082	11 592	.4009	182	.0063	1.73	1 264	.0437	10.90	2 450	.0847	23.31	3 532	.1221	30.47
264	9 725	.3983	1 082	10 807	.4426	–	–	–	1 082	.0443	10.01	2 136	.0875	21.96	3 218	.1318	29.78
200	2 397	.4090	180	2 577	.4397	–	–	–	180	.0307	6.99	526	.0897	21.94	706	.1205	27.40
993	14 822	.3027	991	15 813	.3229	491	.0100	3.31	500	.0102	3.16	2 817	.0575	19.01	3 808	.0778	24.08
790	10 871	.3655	991	11 862	.3988	95	.0032	.89	896	.0301	7.55	2 274	.0765	20.92	3 265	.1098	27.52
290	3 291	.3535	330	3 621	.3890	–	–	–	330	.0354	9.11	711	.0764	21.60	1 041	.1118	28.75

IN THE DISTRICT COURT
FOR THE NORTHERN DISTRICT
EQUITY

STATEMENT OF COMMISSIONS,

UNDER PRESENT COMMISSION RATES, AS COMPARED WITH PA

NOTE:- The 1934 figures cover Jany. Feby. Mar. & Apr. unless otherwise indicated.

FIRM NO.	NAME OF FIRM	YEAR	NUMBER OF HEAD	COMMISSIONS					COSTS				AP
				ACTUAL		SECRETARY'S ORDER			EXCLUDING APPRAISALS				
				TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL TOTAL	TOTAL PER HEAD	
29	EVANS, SNIDER, BUEL CO.	1932	126 168	28 213	.2336	80.13	22 607	.1792	11 355	18 504	29 859	.2366	
		1933	111 494	29 456	.2642	80.13	23 603	.2117	11 896	17 217	29 113	.2611	
		1934	28 257	9 143	.3236	80.13	7 326	.2593	3 360	5 467	8 827	.3124	
30	FILLER, WILSON & MCCLELLAND	1932	76 695	30 259	.3945	79.32	24 001	.3129	14 450	18 090	32 540	.4242	
		1933	70 535	28 734	.4074	79.32	22 792	.3231	11 485	16 129	27 614	.3915	
		1934	(DESTROYED BY FIRE)										
31	FRED FREEMAN	1932	1 033	408	.3950	79.32	324	.3137	204	213	417	.4037	
		1933	1 825	716	.3923	79.32	568	.3112	716	-	716	.3923	
		1934	(DESTROYED BY FIRE)										
32	I. O. FRY	1932	4 461	1 931	.4329	79.32	1 532	.3434	1 225	823	2 048	.4591	
		1933	2 807	1 585	.5647	79.32	1 257	.4478	753	832	1 585	.5647	
		1934	958	528	.5511	79.32	419	.4374	191	337	528	.5511	
33	WM. GENTLEMAN & SONS	1932	147 598	65 479	.4436	80.36	52 619	.3565	40 572	29 478	70 050	.4746	
		1933	149 787	63 232	.4221	80.36	50 813	.3392	36 225	24 674	60 899	.4066	
		1934	51 750	22 563	.4360	80.36	18 132	.3504	12 500	8 115	20 615	.3984	
34	GILLOGLY & CO.	1932	156 154	44 991	.2881	78.92	35 507	.2274	26 262	24 314	50 576	.3239	
		1933	170 386	60 147		78.92	47 468	.2786	26 338	32 718	59 056	.3466	
		1934	45 984	20 385	.4433	78.92	16 088	.3499	7 600	9 623	17 223	.3745	
35	GREENWOOD COM. CO.	1932	31 667	9 548	.3015	84.35	8 054	.2543	5 908	3 828	9 736	.3074	
		1933	34 828	10 666	.3062	84.35	8 997	.2583	4 438	6 228	10 666	.3062	
		1934	13 306	3 975	.2987	84.35	3 353	.2520	1 917	2 058	3 975	.2987	
36	HAIME & RENEKER	1932	19 983	8 970	.4489	79.32	7 115	.3561	4 223	5 462	9 685	.4847	
		1933	24 164	9 832	.4069	79.32	7 799	.3228	6 259	3 573	9 832	.4069	
		1934	(DESTROYED BY FIRE)										
37	CHAS. E. HARDING CO.	1932	88 036	26 657	.3028	79.32	21 144	.2402	4 634	28 748	33 382	.3792	
		1933	86 587	30 167	.3484	79.32	23 928	.2764	8 287	25 964	34 251	.3956	
		1934	(DESTROYED BY FIRE)										
38	UNITED COM. CO.	1932	89 292	37 957	.4251	79.32	30 107	.3372	13 204	27 062	40 266	.4509	
		1933	120 354	47 415	.3940	79.32	37 610	.3125	7 951	36 283	44 234	.3675	
		1934	36 314	14 787	.4072	79.32	11 729	.3230	3 476	11 854	15 330	.4222	
39	GEORGE W. VON BERNER	1932	19 846	4 411	.2223	79.32	3 499	.1763	2 576	2 018	4 594	.2315	
		1933	12 037	2 961	.2460	79.32	2 349	.3903	1 530	1 431	2 961	.2460	
		1934	(INCLUDED IN FILLER, WILSON & MCCLELLAND)										

			HEAD		% OF			OWNERS'	OTHER	TOTAL	
			TOTAL	PER HEAD	ACTUAL	TOTAL	PER HEAD	SALARIES	SALY & EXPS	TOTAL	PER HEAD
29	EVANS, SNIDER, BUEL CO.	1932	126 168	28 213	.2336	80.13	22 607	.1792	11 355	18 504	29 859	.2366
		1933	111 494	29 456	.2642	80.13	23 603	.2117	11 896	17 217	29 113	.2611
		1934	28 257	9 143	.3236	80.13	7 326	.2593	3 360	5 467	8 827	.3124
30	FILLER, WILSON & MCCLELLAND	1932	76 695	30 259	.3945	79.32	24 001	.3129	14 450	18 090	32 540	.4242
		1933	70 535	28 734	.4074	79.32	22 792	.3231	11 485	16 129	27 614	.3915
		1934	(DESTROYED BY FIRE)									
31	FRED FREEMAN	1932	1 033	408	.3950	79.32	324	.3137	204	213	417	.4037
		1933	1 825	716	.3923	79.32	568	.3112	716	-	716	.3923
		1934	(DESTROYED BY FIRE)									
32	I. O. FRY	1932	4 461	1 931	.4329	79.32	1 532	.3434	1 225	823	2 048	.4591
		1933	2 807	1 585	.5647	79.32	1 257	.4478	753	832	1 585	.5647
		1934	958	528	.5511	79.32	419	.4374	191	337	528	.5511
33	WM. GENTLEMAN & SONS	1932	147 598	65 479	.4436	80.36	52 619	.3565	40 572	29 478	70 050	.4746
		1933	149 787	63 232	.4221	80.36	50 813	.3392	36 225	24 674	60 899	.4066
		1934	51 750	22 563	.4360	80.36	18 132	.3504	12 500	8 115	20 615	.3984
34	GILLOGLY & CO.	1932	156 154	44 991	.2881	78.92	35 507	.2274	26 262	24 314	50 576	.3239
		1933	170 386	60.147		78.92	47 468	.2786	26 338	32 718	59 056	.3466
		1934	45 984	20 385	.4433	78.92	16 088	.3499	7 600	9 623	17 223	.3745
35	GREENWOOD COM. CO.	1932	31 667	9 548	.3015	84.35	8 054	.2543	5 908	3 828	9 736	.3074
		1933	34 828	10 666	.3062	84.35	8 997	.2583	4 438	6 228	10 666	.3062
		1934	13 306	3 975	.2987	84.35	3 353	.2520	1 917	2 058	3 975	.2987
36	HAIME & RENEKER	1932	19 983	8 970	.4489	79.32	7 115	.3561	4 223	5 462	9 685	.4847
		1933	24 164	9 832	.4069	79.32	7 799	.3228	6 259	3 573	9 832	.4069
		1934	(DESTROYED BY FIRE)									
37	CHAS. E. HARDING CO.	1932	88 036	26 657	.3028	79.32	21 144	.2402	4 634	28 748	33 382	.3792
		1933	86 587	30 167	.3484	79.32	23 928	.2764	8 287	25 964	34 251	.3956
		1934	(DESTROYED BY FIRE)									
38	UNITED COM. CO.	1932	89 292	37 957	.4251	79.32	30 107	.3372	13 204	27 062	40 266	.4509
		1933	120 354	47 415	.3940	79.32	37 610	.3125	7 951	36 283	44 234	.3675
		1934	36 314	14 787	.4072	79.32	11 729	.3230	3 476	11 854	15 330	.4222
39	GEORGE W. VON BERNER	1932	19 846	4 411	.2223	79.32	3 499	.1763	2 576	2 018	4 594	.2315
		1933	12 037	2 961	.2460	79.32	2 349	.3903	1 530	1 431	2 961	.2460
		1934	(INCLUDED IN FILLER, WILSON & MCCLELLAND)									
40	HEFNER COM. CO.	1932	82 473	32 164	.3900	80.95	26 037	.3157	16 800	17 536	34 336	.4163
		1933	119 524	43 736	.3659	80.95	35 404	.2962	22 800	19 794	42 594	.3564
		1934	41 225	16 361	.3969	80.95	13 244	.3213	6 000	7 664	13 664	.3314
41	GEO. F. HOGAN	1932	1 192	443	.3716	79.32	351	.2945	264	273	537	.4505
		1933	(DECEASED)									
		1934	(DECEASED)									
42	HOLLOWAY & OGREN	1932	93 166	28 314	.3039	79.32	22 459	.2411	14 854	14 398	29 252	.3140
		1933	106 562	30 864	.2896	79.32	24 481	.2297	19 806	11 018	30 824	.2893
		1934	(DESTROYED BY FIRE)									

THE DISTRICT COURT OF THE UNITED STATES
E NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13 829

MISSIONS, COSTS AND PROFIT OR LOSS

AS COMPARED WITH RATES UNDER SECRETARY'S ORDER DATED MARCH 12, 1934

SCHEDULE NO. 7

COSTS					PROFIT OR LOSS											
PRAISALS			APPRAISAL ADJUST- MENTS	INCLUDING APPRAISALS		BASED ON PRESENT COMMS. EXCLUDING APPRAISALS			BASED ON PRESENT COMMS. INCLUDING APPRAISALS			BASED ON SECY'S COMMS. EXCLUDING APPRAISALS			BASED ON SECY'S COMMS. INCLUDING APPRAISALS		
TOTAL	TOTAL	PER HEAD		TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
29 859	.2366	1 845		31 704	.2513	1 646	.0130	5.51	3 491	.0277	11.01	7 252	.0575	24.29	9 097	.0721	28.69
29 113	.2611	1 845		30 958	.2777	343	.0031	1.18	1 502	.0135	4.85	5 510	.0494	18.93	7 355	.0660	23.75
8 827	.3124	615		9 442	.3341	316	.0112	3.58	299	.0106	3.17	1 501	.0531	17.00	2 116	.0749	22.41
32 540	.4242	950		31 590	.4119	2 281	.0297	7.01	1 331	.0174	4.21	8 539	.1113	26.24	7 589	.0990	24.02
27 614	.3915	950		26 664	.3780	1 120	.0159	4.06	2 070	.0293	7.76	4 822	.0684	17.46	3 872	.0549	14.52
417	.4037	996		1 413	1.3679	9	.0087	2.16	1 005	.9729	71.13	93	.0900	22.30	1 089	1.0542	77.07
716	.3923	996		1 712	.9381	-	-	-	996	.5458	58.18	148	.0811	20.67	1 144	.6268	66.82
2 048	.4591	57		2 623	.5880	117	.0262	5.71	692	.1551	26.38	516	.1157	25.20	1 091	.2446	41.59
1 585	.5647	575		2 160	.7695	-	-	-	575	.2048	26.62	328	.1169	20.69	903	.3217	41.81
528	.5511	192		720	.7516	-	-	-	192	.2004	26.67	109	.1138	20.64	301	.3142	41.81
70 050	.4746	53		70 103	.4749	4 571	.0310	6.53	4 624	.0313	6.60	17 431	.1181	24.88	17 484	.1185	24.94
60 899	.4066	53		60 952	.4069	2 333	.0155	3.83	2 280	.0152	3.74	10 086	.0673	16.56	10 139	.0677	16.63
20 615	.3984	18		20 633	.3987	1 948	.0376	9.45	1 930	.0373	9.35	2 483	.0480	12.04	2 501	.0483	12.12
50 576	.3289	1 093		51 669	.3309	5 585	.0358	11.04	6 678	.0428	12.92	15 069	.0965	29.79	16 162	.1035	31.28
59 056	.3466	1 093		60 149	.3530	1 091	.0064	1.85	2	-	-	11 588	.0680	19.62	12 681	.0744	21.08
17 223	.3745	364		17 587	.3824	3 162	.0688	16.36	2 798	.0608	15.91	1 135	.0247	6.59	1 499	.0326	8.52
9 736	.3074	92		9 828	.3104	186	.0059	1.93	280	.0089	2.85	1 682	.0531	17.28	1 774	.0560	18.05
10 666	.3062	92		10 758	.3089	-	-	-	92	.0026	.86	1 669	.0479	15.65	1 761	.0506	16.37
3 975	.2987	31		4 006	.3011	-	-	-	31	.0023	.77	622	.0467	15.65	653	.0491	16.30
9 685	.4847	2 977		12 662	.6336	715	.0358	7.38	3 692	.1847	29.16	2 570	.1286	26.54	5 547	.2776	43.81
9 832	.4069	2 977		12 809	.5301	-	-	-	2 977	.1232	23.24	2 033	.0841	20.68	5 010	.2073	39.11
33 382	.3792	7 366		40 748	.4629	6 725	.0764	20.14	14 091	.1601	34.58	12 238	.1390	36.66	19 604	.2227	48.11
34 251	.3956	7 366		41 617	.4806	4 084	.0472	11.92	11 450	.1322	27.51	10 323	.1192	30.14	17 689	.2043	42.50
40 266	.4509	7 116		47 382	.5306	2 309	.0258	5.73	9 425	.1055	19.90	10 159	.1138	25.23	17 275	.1935	36.46
44 234	.3675	7 389		51 623	.4289	3 181	.0264	7.19	4 206	.0350	8.15	6 624	.0550	14.97	14 013	.1164	27.14
5 330	.4222	2 463		17 793	.4900	543	.0150	8.54	3 006	.0828	16.90	3 601	.0992	23.49	6 064	.1670	34.08
[illegible]	.2915			4 518	.2277	183	.0092	3.98	107	.0058	2.37	1 095	.0552	23.84	1 019	.0513	22.56

1 896	17 217	29 113	.2611	1 845	30 958	.2777	343	.0031	1.18	1 502	.0135	4.85	5 510	.0494	18.99	7 355	.0660	25.28
3 360	5 467	8 827	.3124	615	9 442	.3341	316	.0112	3.58	299	.0106	3.17	1 501	.0531	17.00	2 116	.0749	22.41
14 450	18 090	32 540	.4242	950	31 590	.4119	2 281	.0297	7.01	1 331	.0174	4.21	8 539	.1113	26.24	7 589	.0990	24.02
11 485	16 129	27 614	.3915	950	26 664	.3780	1 120	.0159	4.06	2 070	.0293	7.76	4 822	.0684	17.46	3 872	.0549	14.52
204	213	417	.4037	996	1 413	1.3679	9	.0087	2.16	1 005	.9729	71.13	93	.0900	22.30	1 089	1.0542	77.07
716	–	716	.3923	996	1 712	.9381	–	–	–	996	.5458	58.18	148	.0811	20.67	1 144	.6268	66.82
1 225	823	2 048	.4591	571	2 623	.5880	117	.0262	5.71	692	.1551	26.38	516	.1157	25.20	1 091	.2446	41.59
753	832	1 585	.5647	575	2 160	.7695	–	–	–	575	.2048	26.62	328	.1169	20.69	903	.3217	41.81
191	337	528	.5511	192	720	.7516	–	–	–	192	.2004	26.67	109	.1138	20.64	301	.3142	41.81
40 572	29 478	70 050	.4746	53	70 103	.4749	4 571	.0310	6.53	4 624	.0313	6.60	17 431	.1181	24.88	17 484	.1185	24.94
36 225	24 674	60 899	.4066	53	60 952	.4069	2 333	.0155	3.83	2 280	.0152	3.74	10 086	.0673	16.56	10 139	.0677	16.63
12 500	8 115	20 615	.3984	18	20 633	.3987	1 948	.0376	9.45	1 930	.0373	9.35	2 483	.0480	12.04	2 501	.0483	12.12
26 262	24 314	50 576	.3239	1 093	51 669	.3309	5 585	.0358	11.04	6 678	.0428	12.92	15 069	.0965	29.79	16 162	.1035	31.28
26 338	32 718	59 056	.3466	1 093	60 149	.3530	1 091	.0064	1.85	2	–	–	11 588	.0680	19.62	12 681	.0744	21.08
7 600	9 623	17 223	.3745	364	17 587	.3624	3 162	.0688	18.36	2 798	.0608	15.91	1 135	.0247	6.59	1 499	.0326	8.52
5 908	3 828	9 736	.3074	92	9 828	.3104	188	.0059	1.93	280	.0089	2.85	1 682	.0531	17.28	1 774	.0560	18.05
4 438	6 228	10 666	.3062	92	10 758	.3089	–	–	–	92	.0026	.86	1 669	.0479	15.65	1 761	.0506	16.37
1 917	2 058	3 975	.2987	31	4 006	.3011	–	–	–	31	.0023	.77	622	.0467	15.65	653	.0491	16.30
4 223	5 462	9 685	.4847	2 977	12 662	.6336	715	.0358	7.38	3 692	.1847	29.16	2 570	.1286	26.54	5 547	.2776	43.81
6 259	3 573	9 832	.4069	2 977	12 809	.5301	–	–	–	2 977	.1232	23.24	2 035	.0841	20.68	5 010	.2073	39.11
14 634	28 748	33 382	.3792	7 366	40 748	.4629	9 725	.0764	20.14	14 091	.1601	34.56	12 238	.1390	36.66	19 604	.2227	48.11
18 287	25 964	34 251	.3956	7 366	41 617	.4806	4 084	.0472	11.92	11 450	.1322	27.51	10 323	.1192	30.14	17 689	.2043	42.50
13 204	27 062	40 266	.4509	7 116	47 382	.5306	2 309	.0258	5.73	9 425	.1055	19.90	10 159	.1138	25.23	17 275	.1935	36.46
7 951	36 283	44 234	.3675	7 389	51 623	.4289	3 181	.0264	7.19	4 206	.0350	8.15	6 624	.0550	14.97	14 013	.1164	27.14
3 476	11 854	15 330	.4222	2 463	17 793	.4900	543	.0150	3.54	3 006	.0828	16.90	3 601	.0992	23.49	6 064	.1670	34.08
2 576	2 018	4 594	.2315		4 518	.2277	183	.0092	3.98	107	.0054	2.37	1 095	.0552	23.84	1 019	.0513	22.53
1 530	1 431	2 961	.2460		2 885	.2397	–	–	–	76	.0063	2.63	612	.0508	20.67	536	.0445	18.58
16 800	17 536	34 336	.4163		32 536	.3945	2 172	.0263	6.33	372	.0045	1.14	8 299	.1006	24.17	6 499	.0788	19.97
22 800	19 794	42 594	.3564		40 794	.3413	1 142	.0100	2.68	2 942	.0246	7.21	7 190	.0602	16.88	5 390	.0451	13.21
6 000	7 664	13 664	.3314		13 064	.3169	2 697	.0654	19.74	3 297	.0800	25.24	420	.0102	3.07	180	.0044	1.38
264	273	537	.4505	936	1 473	1.2357	94	.0789	17.50	1 030	.8641	69.93	186	.1560	34.64	1 122	.9413	76.17
14 854	14 398	29 252	.3140		27 873	.2992	948	.0101	3.21	441	.0047	1.58	6 793	.0729	23.22	5 414	.0581	19.43
19 806	11 018	30 824	.2893		29 445	.2763	40	.0004	.13	1 419	.0133	4.82	6 343	.0595	20.58	4 964	.0466	16.86

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN D
EQUITY NO. 13,829

STATEMENT OF COMMISSIONS, COSTS AND

UNDER PRESENT COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S

NOTE:- The 1934 figures cover Jany. Feby. Mar. & April unless otherwise indicated.

FIRM NO.	NAME OF FIRM	YEAR	NUMBER OF HEAD	COMMISSIONS					COSTS						
				ACTUAL		SECRETARY'S ORDER			EXCLUDING APPRAISALS				APPRAISAL ADJUST-MENTS.	INCLUDING APPRAISALS	
				TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL	PER HEAD		TOTAL	PER HEAD
		1932	88 447	40 362	.4563	79.32	32 015	.3620	16 963	23 087	40 050	.4528	4 358	44 408	.502
43	IOWA L. S. COM. CO.	1933	97 668	69 155	.7081	79.32	54 854	.5616	22 972	38 516	61 488	.6296	4 358	65 846	.6742
		1934	42 823	25 197	.5884	79.32	19 986	.4667	5 950	14 861	20 811	.4860	1 451	22 262	.5199
		1932	19 008	4 340	.2283	79.85	3 465	.1823	2 118	2 321	4 439	.2335	382	4 821	.2536
44	DAVID C. WAGNER	1933	16 555	3 830	.2314	79.85	3 058	.1847	2 494	1 336	3 830	.2314	382	4 212	.2544
		1934	2 856	705	.2468	79.85	563	.1971	458	247	705	.2468	96	801	.2805
		1932	236 922	88 541	.3737	78.63	69 620	.2939	16 667	63 168	79 835	.3370	20 333	100 168	.4228
45	WALTERS & DUNBAR	1933	219 063	85 522	.3904	78.63	67 246	.3070	26 810	58 250	85 060	.3883	20 333	105 393	.4811
		1934	60 431	25 625	.4240	78.63	20 149	.3334	5 000	18 776	23 776	.3934	6 777	30 553	.5056
		1932	6 763	3 346	.4948	79.41	2 657	.3929	1 072	2 475	3 547	.5245	367	3 914	.5787
46	WALTERS BROTHERS	1933	9 736	5 432	.5579	79.41	4 314	.4431	1 552	2 845	4 397	.4516	367	4 764	.4893
	(JAN. FEB. & MARCH)-	1934	1 763	1 051	.5961	79.41	835	.4736	623	428	1 051	.5961	92	1 143	.6483
		1932	14 964	1 563	.1044	79.32	1 240	.0829	1 285	351	1 636	.1093	1 715	3 351	.2239
47	KNETTLE BROTHERS	1933	20 424	2 001	.0980	79.32	1 587	.0777	1 815	186	2 001	.0980	1 715	3 716	.1819
		1934	(DESTROYED BY FIRE)												
		1932	225 595	67 989	.3014	84.16	57 220	.2536	7 134	57 833	64 967	.2880	10 499	75 466	.3345
48	KUENSTER L. S. COM. CO.	1933	231 987	84 090	.3625	84.16	70 770	.3051	8 148	67 460	75 608	.3259	10 499	86 107	.3712
		1934	85 660	34 061	.3976	84.16	28 666	.3346	2 800	24 472	27 272	.3184	3 496	30 768	.3592
		1932	7 653	1 205	.1574	79.32	956	.1249	368	894	1 262	.1649	832	2 094	.2736
49	JOHN A WATERS L. S. COM. CO.	1933	(DESTROYED BY FIRE)												
		1934	(DESTROYED BY FIRE)												
	LAMBRIGHT, KEYS & HUSTON	1932	22 720	9 404	.4139	79.84	7 508	.3305	5 608	4 762	10 370	.4564	2 492	12 862	.5661
50	LYMAN, KEYS COM. CO.	1933	15 923	4 993	.3136	79.84	3 986	.2503	2 209	2 784	4 993	.3136	830	5 823	.3657
		1934	4 915	1 732	.3524	79.84	1 383	.2814	729	1 003	1 732	.3522	276	2 008	.4085
		1932	280 543	115 144	.4104	82.06	94 487	.3368	19 080	86 875	105 955	.3777	5 670	111 625	.3979
51	LAWLER BROTHERS	1934	239 246	104 148	.4353	82.06	85 464	.3572	15 660	77 459	93 119	.3892	5 670	98 789	.4129
		1934	69 550	34 590	.4973	82.06	28 385	.4081	5 600	25 658	31 258	.4494	1 888	33 146	.4766
		1932	6 194	3 581	.5781	74.61	2 672	.4314	2 279	1 399	3 678	.5938	779	2 899	.4680
52	L. B. WERDEN	1933	5 452	2 777	.5094	74.61	2 072	.3800	1 497	1 280	2 777	.5053	779	1 998	.3665
		[illegible]	[illegible]	[illegible]	[illegible]	74.61	818	.4337	500	596	1 096	.5811	260	836	.4431

			HEAD	TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL TOTAL	TOTAL PER HEAD	ADJUST-MENTS.	TOTAL	PER HEAD
43	IOWA L. S. COM. CO.	1932	88 447	40 362	.4563	79.32	32 015	.3620	16 963	23 087	40 050	.4528	4 358	44 408	.5021
		1933	97 668	69 155	.7081	79.32	54 854	.5616	22 972	38 516	61 488	.6296	4 358	65 846	.6742
		1934	42 823	25 197	.5884	79.32	19 986	.4667	5 950	14 861	20 811	.4860	1 451	22 262	.5199
44	DAVID C. WAGNER	1932	19 008	4 340	.2283	79.85	3 465	.1823	2 118	2 321	4 439	.2335	382	4 821	.2536
		1933	16 555	3 830	.2314	79.85	3 058	.1847	2 494	1 336	3 830	.2314	382	4 212	.2544
		1934	2 856	705	.2468	79.85	563	.1971	456	247	705	.2468	96	801	.2805
45	WALTERS & DUNBAR	1932	236 922	88 541	.3737	78.63	69 620	.2939	16 667	63 168	79 835	.3370	20 333	100 168	.4228
		1933	219 063	85 522	.3904	78.63	67 246	.3070	26 810	58 250	85 060	.3883	20 333	105 393	.4811
		1934	60 431	25 625	.4240	78.63	20 149	.3334	5 000	18 776	23 776	.3934	6 777	30 553	.5056
46	WALTERS BROTHERS (JAN. FEB. & MARCH)-	1932	6 763	3 346	.4948	79.41	2 657	.3929	1 072	2 475	3 547	.5245	367	3 914	.5787
		1933	9 736	5 432	.5579	79.41	4 314	.4431	1 552	2 845	4 397	.4516	367	4 764	.4893
		1934	1 763	1 051	.5961	79.41	835	.4736	623	428	1 051	.5961	92	1 143	.6483
47	KNETTLE BROTHERS	1932	14 964	1 563	.1044	79.32	1 240	.0829	1 285	351	1 636	.1093	1 715	3 351	.2239
		1933	20 424	2 001	.0980	79.32	1 587	.0777	1 815	186	2 001	.0980	1 715	3 716	.1819
		1934	(DESTROYED BY FIRE)												
48	KUENSTER L. S. COM. CO.	1932	225 595	67 989	.3014	84.16	57 220	.2536	7 134	57 833	64 967	.2880	10 499	75 466	.3345
		1933	231 987	84 090	.3625	84.16	70 770	.3051	8 148	67 460	75 608	.3259	10 499	86 107	.3712
		1934	85 660	34 061	.3976	84.16	28 666	.3346	2 800	24 472	27 272	.3184	3 496	30 768	.3592
49	JOHN A WATERS L. S. COM. CO.	1932	7 653	1 205	.1574	79.32	956	.1249	368	894	1 262	.1649	832	2 094	.2736
		1933	(DESTROYED BY FIRE)												
		1934	(DESTROYED BY FIRE)												
50	LAMBRIGHT, KEYS & HUSTON LYMAN, KEYS COM. CO.	1932	22 720	9 404	.4139	79.84	7 508	.3305	5 608	4 762	10 370	.4564	2 492	12 862	.5661
		1933	15 923	4 993	.3136	79.84	3 986	.2503	2 209	2 784	4 993	.3136	830	5 823	.3657
		1934	4 915	1 732	.3524	79.84	1 383	.2814	729	1 003	1 732	.3522	276	2 008	.4085
51	LAWLER BROTHERS	1932	280 583	115 144	.4104	82.06	94 487	.3368	19 080	86 875	105 955	.3777	5 670	111 625	.3979
		1934	239 246	104 148	.4353	82.06	85 464	.3572	15 660	77 459	93 119	.3892	5 670	98 789	.4129
		1934	69 550	34 590	.4973	82.06	28 385	.4081	5 600	25 658	31 258	.4494	1 888	33 146	.4766
52	L. B. WERDEN	1932	6 194	3 581	.5781	74.61	2 672	.4314	2 279	1 399	3 678	.5938	779	2 899	.4680
		1933	5 452	2 777	.5094	74.61	2 072	.3800	1 497	1 280	2 777	.5053	779	1 998	.3665
		1934	1 886	1 096	.5811	74.61	818	.4337	500	596	1 096	.5811	260	836	.4433
53	CHAS. L. WILLS & CO.	1932	(DESTROYED BY FIRE)												
		1933	(DESTROYED BY FIRE)												
		1934	159	58	.3648	80.32	47	.2956	25	33	58	.3774	-	58	.3774
54	W. W. WILSON & CO.	1932	101 405	39 496	.3895	80.33	31 727	.3129	6 017	34 493	40 510	.3995	8 982	49 492	.4881
		1933	103 653	41 281	.3983	80.33	33 161	.3199	11 184	29 820	41 004	.3956	8 982	49 986	.4822
		1934	35 278	14 745	.4180	80.33	11 845	.3358	2 353	12 183	14 536	.4120	2 991	17 527	.4968
55	MARTIN BROS. & CO.	1932	96 984	36 751	.3789	78.08	28 695	.2959	13 850	22 794	36 644	.3778	4 710	41 354	.4264
		1933	94 341	42 137	.4466	78.08	32 901	.3487	13 850-	24 930	38 780	.4111	4 710	43 490	.4610
		1934	35 077	15 531	.4428	78.08	12 127	.3457	5 000	10 055	15 055	.4292	1 568	16 623	.4739
56	MCCAUSLAND, HOAG & VAUGHAN	1932	91 568	51 017	.5571	73.02	37 253	.4068	13 028	30 635	43 663	.4768	8 972	52 635	.5748
		1933	97 694	51 115	.5232	73.02	37 324	.3821	16 628	27 814	44 442	.4549	8 972	53 414	.5467
		1934	34 061	20 689	.6074	73.02	15 107	.4435	5 733	8 230	13 963	.4099	2 988	16 951	.4977

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,829

NT OF COMMISSIONS, COSTS AND PROFIT OR LOSS

NT COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S ORDER DATED MARCH 12, 1934

SCHEDULE NO. 7

COSTS							PROFIT OR LOSS											
EXCLUDING APPRAISALS				APPRAISAL ADJUST-MENTS	INCLUDING APPRAISALS		BASED ON PRESENT COMMS. EXCLUDING APPRAISALS			BASED ON PRESENT COMMS. INCLUDING APPRAISALS			BASED ON SECY'S COMMS. EXCLUDING APPRAISALS			BASED ON SECY'S COMMS. INCLUDING APPRAISALS		
OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL	PER HEAD		TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
16 963	23 087	40 050	.4528	4 358	44 408	.5021	312	.0035	.78	4 046	.0458	9.11	8 035	.0908	20.06	12 393	.1401	27.91
22 972	38 516	61 488	.6296	4 358	65 846	.6742	7 667	.0785	12.47	3 309	.0339	5.03	6 634	.0679	10.79	10 992	.1125	16.69
5 950	14 861	20 811	.4860	1 451	22 262	.5199	4 386	.1024	21.08	2 935	.0685	13.18	825	.0193	3.96	2 276	.0531	10.22
2 118	2 321	4 439	.2335	382	4 821	.2536	99	.0052	2.23	481	.0253	9.98	974	.0512	21.94	1 356	.0713	28.13
2 494	1 336	3 830	.2314	382	4 212	.2544	-	-	-	382	.0231	9.07	772	.0466	20.16	1 154	.0697	27.40
458	247	705	.2468	96	801	.2805	-	-	-	96	.0336	11.99	142	.0497	20.14	238	.0833	29.71
16 667	63 168	79 835	.3370	20 333	100 168	.4228	8 706	.0367	10.90	11 627	.0491	11.61	10 215	.0431	12.80	30 548	.1289	30.50
26 810	58 250	85 060	.3883	20 333	105 393	.4811	462	.0021	.54	19 671	.0907	16.85	17 814	.0813	20.94	38 147	.1741	36.20
5 000	18 776	23 776	.3934	6 777	30 553	.5056	1 849	.0306	7.78	4 928	.0815	16.13	3 627	.0600	15.25	10 404	.1722	34.05
1 072	2 475	3 547	.5245	367	3 914	.5787	201	.0297	5.67	568	.0839	14.51	890	.1316	25.09	1 257	.1859	32.12
1 552	2 845	4 397	.4516	367	4 764	.4893	1 035	.1063	23.54	668	.0686	14.02	83	.0085	1.89	450	.0462	9.45
623	428	1 051	.5961	92	1 143	.6483	-	-	-	92	.0522	8.05	216	.1225	20.55	308	.1747	26.95
1 285	351	1 636	.1093	1 715	3 351	.2239	73	.0049	4.46	1 788	.1195	53.36	396	.0265	24.21	2 111	.1411	63.00
1 815	186	2 001	.0980	1 715	3 716	.1819	-	-	-	1 715	.0840	46.15	414	.0203	20.69	2 129	.1042	57.29
7 134	57 833	64 967	.2880	10 499	75 466	.3345	3 022	.0134	4.65	7 477	.0331	9.91	7 747	.0343	11.92	18 246	.0809	24.16
8 148	67 460	75 608	.3259	10 499	86 107	.3712	8 482	.0366	11.22	2 017	.0087	2.34	4 838	.0209	6.40	15 337	.0661	17.81
2 800	24 472	27 272	.3184	3 496	30 768	.3592	6 789	.0793	24.89	3 293	.0384	10.70	1 394	.0163	5.11	2 102	.0245	6.83
368	894	1 262	.1649	832	2 094	.2736	57	.0075	4.52	889	.1162	42.45	306	.0400	24.25	1 138	.1487	54.35
5 608	4 762	10 370	.4564	2 492	12 862	.5661	966	.0425	9.32	3 458	.1522	26.89	2 862	.1260	27.60	5 354	.2357	41.63
2 209	2 784	4 993	.3136	830	5 823	.3657	-	-	-	830	.0521	14.25	1 007	.0632	20.17	1 837	.1154	31.55
729	1 003	1 732	.3522	276	2 008	.4085	-	-	-	276	.0562	13.75	349	.0710	20.15	625	.1272	31.13
19 080	86 875	105 955	.3777	5 670	111 625	.3979	9 189	.0327	8.67	3 519	.0125	3.15	11 468	.0409	10.82	17 138	.0611	15.35
15 660	77 459	93 119	.3892	5 670	98 789	.4129	11 029	.0461	11.84	5 359	.0224	5.42	7 655	.0320	8.22	13 325	.0557	13.49
5 600	25 658	31 258	.4494	1 888	33 146	.4766	3 332	.0479	10.66	1 444	.0208	4.36	2 873	.0413	9.19	4 761	.0685	14.36
2 279	1 399	3 678	.5938	779	2 899	.4680	97	.0157	2.64	682	.1101	23.53	1 006	.1624	27.35	227	.0367	7.83
1 497	1 280	2 777	.5053	779	1 998	.3665	-	-	-	779	.1429	38.99	705	.1293	25.39	74	.0136	3.70
500	596	1 096	.5811	260	836	.4433	-	-	-	260	.1379	31.10	278	.1474	25.36	18	.0095	2.15
		58	.3774	-	58	.3774	-	-	-	-	-	-	11	.0692	18.97	11	.0692	18.97

16 963	23 087	40 050	.4528	4 358	44 408	.5021	812	.0035	.78	4 046	.0458	9.11	8 035	.0908	20.06	12 393	.1401	27.91
22 972	38 516	61 488	.6296	4 358	65 846	.6742	7 667	.0785	12.47	3 309	.0339	5.03	6 634	.0679	10.79	10 992	.1125	16.69
5 950	14 861	20 811	.4860	1 451	22 262	.5199	4 386	.1024	21.08	2 935	.0685	13.18	825	.0193	3.96	2 276	.0531	10.22
2 118	2 321	4 439	.2335	382	4 821	.2536	99	.0052	2.23	481	.0253	9.98	974	.0512	21.94	1 356	.0713	28.13
2 494	1 336	3 830	.2314	382	4 212	.2544	–	–	–	382	.0231	9.07	772	.0466	20.16	1 154	.0697	27.40
458	247	705	.2468	96	801	.2805	–	–	–	96	.0336	11.99	142	.0497	20.14	238	.0833	29.71
16 667	63 168	79 835	.3370	20 333	100 168	.4228	8 706	.0367	10.90	11 627	.0491	11.61	10 215	.0431	12.80	30 548	.1289	30.50
26 810	58 250	85 060	.3883	20 333	105 393	.4811	462	.0021	.54	19 671	.0907	18.85	17 814	.0813	20.94	38 147	.1741	36.20
5 000	18 776	23 776	.3934	6 777	30 553	.5056	1 849	.0306	7.78	4 928	.0815	16.13	3 627	.0600	15.25	10 404	.1722	34.05
1 072	2 475	3 547	.5245	367	3 914	.5787	201	.0297	5.67	568	.0839	14.51	890	.1316	25.09	1 257	.1859	32.12
1 552	2 845	4 397	.4516	367	4 764	.4893	1 035	.1063	23.54	668	.0686	14.02	83	.0085	1.89	450	.0462	9.45
623	428	1 051	.5961	92	1 143	.6483	–	–	–	92	.0522	8.05	216	.1225	20.55	308	.1747	26.95
1 285	351	1 636	.1093	1 715	3 351	.2239	73	.0049	4.46	1 788	.1195	53.36	396	.0265	24.21	2 111	.1411	63.00
1 815	186	2 001	.0980	1 715	3 716	.1819	–	–	–	1 715	.0840	46.15	414	.0203	20.69	2 129	.1042	57.29
7 134	57 833	64 967	.2880	10 499	75 466	.3345	3 022	.0134	4.65	7 477	.0331	9.91	7 747	.0343	11.92	18 246	.0809	24.16
8 148	67 460	75 608	.3259	10 499	86 107	.3712	8 482	.0366	11.22	2 017	.0087	2.34	4 838	.0209	6.40	15 337	.0661	17.81
2 800	24 472	27 272	.3184	3 496	30 768	.3592	6 789	.0793	24.89	3 293	.0384	10.70	1 394	.0163	5.11	2 102	.0245	6.83
368	894	1 262	.1649	832	2 094	.2736	57	.0075	4.52	889	.1162	42.45	306	.0400	24.25	1 138	.1487	54.35
5 608	4 762	10 370	.4564	2 492	12 862	.5661	966	.0425	9.32	3 458	.1522	26.89	2 862	.1260	27.60	5 354	.2357	41.63
2 209	2 784	4 993	.3136	830	5 823	.3657	–	–	–	830	.0521	14.25	1 007	.0632	20.17	1 837	.1154	31.55
729	1 003	1 732	.3522	276	2 008	.4085	–	–	–	276	.0562	13.75	349	.0710	20.15	625	.1272	31.13
19 080	86 875	105 955	.3777	5 670	111 625	.3979	8 189	.0327	8.67	3 519	.0125	3.15	11 468	.0409	10.82	17 138	.0611	15.35
15 660	77 459	93 119	.3892	5 670	98 789	.4129	11 029	.0461	11.84	5 359	.0224	5.42	7 655	.0320	8.22	13 325	.0557	13.49
5 600	25 658	31 258	.4494	1 888	33 146	.4766	3 332	.0479	10.66	1 444	.0208	4.36	2 873	.0413	9.19	4 761	.0685	14.36
2 279	1 399	3 678	.5938	779	2 899	.4680	97	.0157	2.64	682	.1101	23.53	1 006	.1624	27.35	227	.0367	7.83
1 497	1 280	2 777	.5053	779	1 998	.3665	–	–	–	779	.1429	38.99	705	.1293	25.39	74	.0136	3.70
500	596	1 096	.5811	260	836	.4433	–	–	–	260	.1379	31.10	278	.1474	25.36	18	.0095	2.15
25	33	58	.3774	–	58	.3774	–	–	–	–	–	–	11	.0692	18.97	11	.0692	18.97
6 017	34 493	40 510	.3995	8 982	49 492	.4881	1 014	.0100	2.50	9 996	.0986	20.20	8 783	.0866	21.68	17 765	.1752	35.89
11 184	29 820	41 004	.3956	8 982	49 986	.4822	277	.0027	.68	8 705	.0840	17.41	7 843	.0757	19.13	16 825	.1623	33.66
2 353	12 183	14 536	.4120	2 991	17 527	.4968	209	.0059	1.44	2 782	.0709	15.88	2 691	.0763	18.51	5 682	.1611	32.42
13 850	22 794	36 644	.3778	4 710	41 354	.4264	107	.0011	.29	4 603	.0475	11.13	7 949	.0820	21.69	12 659	.1305	30.61
13 850	24 930	38 780	.4111	4 710	43 490	.4610	3 357	.0356	8.66	1 353	.0143	3.11	5 879	.0623	15.16	10 589	.1122	24.35
5 000	10 055	15 055	.4292	1 568	16 623	.4739	476	.0136	3.16	1 092	.0311	6.57	2 928	.0835	19.45	4 496	.1282	27.05
13 028	30 635	43 663	.4768	8 972	52 635	.5748	7 354	.0803	16.84	1 618	.0177	3.07	6 410	.0700	14.68	15 382	.1680	29.22
16 628	27 814	44 442	.4549	8 972	53 414	.5467	6 673	.0683	15.02	2 299	.0235	4.30	7 118	.0729	16.02	16 090	.1647	30.12
5 733	8 230	13 963	.4099	2 988	16 951	.4977	6 726	.1975	48.17	3 738	.1097	22.05	1 144	.0336	8.19	1 844	.0541	10.88

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIV
EQUITY NO. 13,829

STATEMENT OF COMMISSIONS, COSTS AND P

UNDER PRESENT COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S OR

NOTE:- The 1934 figures cover Jany. Feby. Mar & Apr. unless otherwise indicated.

FIRM NO.	NAME OF FIRM	YEAR	NUMBER OF HEAD	COMMISSIONS					COSTS						
				ACTUAL		SECRETARY'S ORDER			EXCLUDING APPRAISALS				APPRAISAL ADJUSTMENTS.	INCLUDING APPRAISALS	
				TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL	PER HEAD		TOTAL	PER HEAD
57	MERRION & WILKINS	1932	609 912	48 934	.0802	81.02	39 646	.0650	7 800	24 169	31 969	.0524	4 200	36 169	.0593
		1933	518 290	45 666	.0881	81.02	36 999	.0714	7 800	25 320	33 120	.0639	4 200	37 320	.0720
		1934	120 576	12 755	.1058	81.02	10 334	.0857	2 550	8 321	10 871	.0902	1 399	12 270	.1018
58	MILLER, WHITE & WOODS	1932	126 175	51 524	.4084	79.56	40 992	.3249	16 413	35 349	51 762	.4102	6 767	58 529	.4639
		1933	133 393	55 632	.4171	79.56	44 261	.3318	14 672	35 863	50 535	.3788	6 767	57 302	.4296
		1934	44 948	20 485	.4557	79.56	16 298	.3626	4 146	12 040	16 186	.3601	2 253	18 439	.4102
59	MINTEER HUBBIRD & CO.	1932	28 365	14 276	.5033	79.32	11 324	.3992	5 378	9 344	14 722	.5190	2 622	17 344	.6114
		1933	20 687	12 096	.5847	79.32	9 595	.4638	4 178	7 918	12 096	.5847	2 622	14 718	.7115
		1934	8 305	4 465	.5376	79.32	3 542	.4265	1 597	2 868	4 465	.5376	873	5 338	.6427
60	CHAS. H. MOBERLY	1932	2 845	1 505	.5290	74.14	1 116	.3923	712	875	1 587	.5578	488	2 075	.7293
		1933	3 587	1 581	.4408	74.14	1 172	.3268	710	871	1 581	.4405	488	2 069	.5765
		1934	624	356	.5705	74.14	264	.4231	147	209	356	.5705	163	519	.8317
61	MULLEN COM. CO.	1932	59 672	23 581	.3952	77.61	18 301	.3067	4 272	18 214	22 486	.3768	2 848	25 334	.4246
		1933	50 202	18 745	.3734	77.61	14 548	.2898	3 440	15 411	18 851	.3755	2 848	21 699	.4322
		1934	23 124	6 467	.2797	77.61	5 019	.2170	573	4 695	5 268	.2278	948	6 216	.2688
62	MURRAY & MCDOWELL	1932	101 574	29 691	.2923	80.53	23 910	.2354	9 079	22 589	31 668	.3118	1 921	33 589	.3307
		1933	57 305	20 737	.3619	80.53	16 700	.2914	3 975	14 905	18 880	.3295	1 350	20 230	.3530
		1934	16 245	6 133	.3775	80.56	4 941	.3042	1 248	5 460	6 708	.4129	450	7 158	.4406
63	MUTUAL L. S. COM. CO.	1932	123 044	42 501	.3454	80.56	34 239	.2783	18 563	24 819	43 382	.3526	4 435	47 817	.3886
		1933	126 511	42 618	.3369	80.56	34 333	.2714	15 861	26 757	42 618	.3370	4 435	47 053	.3719
		1934	39 702	15 254	.3842	80.56	12 289	.3095	6 715	12 692	19 407	.4888	1 477	20 884	.5260
64	NALLEY COM. CO. (JAN. FEB. & MARCH)	1932	22 817	8 260	.3620	77.56	6 406	.2808	4 793	3 615	8 408	.3685		7 615	.3337
		1933	18 807	7 968	.4237	77.56	6 180	.3286	3 770	4 198	7 968	.4236		7 175	.3815
		1934	5 428	2 300	.4237	77.56	1 784	.3287	942	1 358	2 300	.4239		2 102	.3874
65	JOSEPH F. NASH	1932	10 680	3 238	.3032	79.32	2 568	.2404	1 131	2 199	3 330	.3118	869	4 199	.3932
		1933	(DESTROYED BY FIRE)												
		1934	3 216	975	.3032	79.32	773	.2404	523	452	975	.3032	289	1 264	.3930
66	NATIONAL L. S. COM. CO.	1932	375 986	146 514	.3897	77.10	112 962	.3004	25 600	104 561	130 161	.3462	14 400	144 561	.3845
		1933	356 850	140 179	.3928	77.10	108 078	.3029	22 131	81 588	103 719	.2907	14 400	118 119	.3310
		1934	102 411	44 809	.4375	77.10	34 548	.3373	6 912	27 877	34 789	.3397	4 795	39 584	.3865
67	E. F. WOELFER & CO.	1932	9 266	5 092	.5495	79.32	4 039	.4359	2 017	3 154	5 171	.5580	1 583	6 754	.7289
		1933	5 923	3 473	.5864	79.32	2 755	.4651	979	2 494	3 473	.5864	1 583	5 056	.8536
		1934	2 080	1 682	.8087	79.32	1 334	.6414	453	1 229	1 682	.8087	527	2 209	1.0620

			HEAD	TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL		MENTS.	TOTAL	PER HEAD	
											TOTAL	PER HEAD				
57	MERRION & WILKINS	1932	609 912	48 934	.0802	81.02	39 646	.0650	7 800	24 169	31 969	.0524	4 200	36 169	.0593	16
		1933	518 290	45 666	.0881	81.02	36 999	.0714	7 800	25 320	33 120	.0639	4 200	37 320	.0720	12
		1934	120 576	12 755	.1058	81.02	10 334	.0857	2 550	8 321	10 871	.0902	1 399	12 270	.1018	1
58	MILLER, WHITE & WOODS	1932	126 175	51 524	.4084	79.56	40 992	.3249	16 413	35 349	51 762	.4102	6 767	58 529	.4639	
		1933	133 393	55 632	.4171	79.56	44 261	.3318	14 672	35 863	50 535	.3788	6 767	57 302	.4296	9
		1934	44 948	20 485	.4557	79.56	16 298	.3626	4 146	12 040	16 186	.3601	2 253	18 439	.4102	4
59	MINTEER HUBBIRD & CO.	1932	28 365	14 276	.5033	79.32	11 324	.3992	5 378	9 344	14 722	.5190	2 622	17 344	.6114	
		1933	20 687	12 096	.5847	79.32	9 595	.4638	4 178	7 918	12 096	.5847	2 622	14 718	.7115	
		1934	8 305	4 465	.5376	79.32	3 542	.4265.	1 597	2 868	4 465	.5376	873	5 338	.6427	
60	CHAS. H. MOBERLY	1932	2 845	1 505	.5290	74.14	1 116	.3923	712	875	1 587	.5578	488	2 075	.7293	
		1933	3 587	1 581	.4408	74.14	1 172	.3268	710	871	1 581	.4405	488	2 069	.5765	
		1934	624	356	.5705	74.14	264	.4231	147	209	356	.5705	163	519	.8317	
61	MULLEN COM. CO.	1932	59 672	23 581	.3952	77.61	18 301	.3067	4 272	18 214	22 486	.3768	2 848	25 334	.4246	
		1933	50 202	18 745	.3734	77.61	14 548	.2898	3 440	15 411	18 851	.3755	2 848	21 699	.4322	
		1934	23 124	6 467	.2797	77.61	5 019	.2170	573	4 695	5 268	.2278	948	6 216	.2688	
62	MURRAY & MCDOWELL	1932	101 574	29 691	.2923	80.53	23 910	.2354	9 079	22 589	31 668	.3118	1 921	33 589	.3307	
		1933	57 305	20 737	.3619	80.53	16 700	.2914	3 975	14 905	18 880	.3295	1 350	20 230	.3530	
		1934	16 245	6 133	.3775	80.56	4 941	.3042	1 248	5 460	6 708	.4129	450	7 158	.4406	
63	MUTUAL L. S. COM. CO.	1932	123 044	42 501	.3454	80.56	34 239	.2783	18 563	24 819	43 382	.3526	4 435	47 817	.3886	
		1933	126 511	42 618	.3369	80.56	34 333	.2714	15 861	26 757	42 618	.3370	4 435	47 053	.3719	
		1934	39 702	15 254	.3842	80.56	12 289	.3095	6 715	12 692	19 407	.4888	1 477	20 884	.5260	
64	NALLEY COM. CO. (JAN. FEB. & MARCH)	1932	22 817	8 260	.3620	77.56	6 406	.2808	4 793	3 615	8 408	.3685	726	7 615	.3337	
		1933	18 807	7 968	.4237	77.56	6 180	.3286	3 770	4 198	7 968	.4236	1[illegible]	7 175	.3815	
		1934	5 428	2 300	.4237	77.56	1 784	.3287	942	1 358	2 300	.4239	[illegible]	2 102	.3874	
65	JOSEPH F. NASH	1932	10 680	3 238	.3032	79.32	2 568	.2404	1 131	2 199	3 330	.3118	869	4 199	.3932	
		1933	(DESTROYED BY FIRE)													
		1934	3 216	975	.3032	79.32	773	.2404	523	452	975	.3032	289	1 264	.3930	
66	NATIONAL L. S. COM. CO.	1932	375 986	146 514	.3897	77.10	112 962	.3004	25 600	104 561	130 161	.3462	14 400	144 561	.3845	1
		1933	356 850	140 179	.3928	77.10	108 078	.3029	22 131	81 588	103 719	.2907	14 400	118 119	.3310	3
		1934	102 411	44 809	.4375	77.10	34 548	.3373	6 [illegible]2	27 877	34 789	.3397	4 795	39 584	.3865	1
67	E. F. WOELFER & CO.	1932	9 266	5 092	.5495	79.32	4 039	.4359	2 017	3 154	5 171	.5580	1 583	6 754	.7289	
		1933	5 923	3 473	.5864	79.32	2 755	.4651	979	2 494	3 473	.5864	1 583	5 056	.8536	
		1934	2 080	1 682	.8087	79.32	1 334	.6414	453	1 229	1 682	.8087	527	2 209	1.0620	
68	HAFNER, NIXON COM. CO.	1932	13 779	4 860	.3527	79.32	3 855	.2798	2 352	2 903	5 255	.3814	352	4 903	.3558	
		1933	(DESTROYED BY FIRE)													
		1934	8 656	3 053	.3527	79.32	2 422	.2798	1 107	1 946	3 053	.3527	117	2 936	.3392	
69	NORTHWESTERN L. S. COM. CO. (INCLUDES GEO. W. BROWNSON A. C. SCHMAL)	1932	77 415	26 606	.3437	81.57	21 703	.2803	7 139	20 492	27 631	.3569	6 651	34 282	.4428	
		1933	88 012	49 561	.5631	81.57	40 427	.4593	6 893	30 572	37 465	.4257	6 651	44 116	.5012	1
		1934	26 827	14 975	.5582	81.57	12 215	.4553	2 940	9 167	12 107	.4513	2 640	14 747	.5497	
70	SILAS PALMER & SONS (JAN. FEB. & MARCH)	1932	100 845	42 162	.4181	80.65	34 004	.3372	5 140	37 501	42 641	.4228	6 860	49 501	.4909	
		1933	94 382	40 823	.4325	80.65	32 924	.3488	3 051	37 772	40 823	.4326	6 860	47 683	.5052	
		1934	25 818	12 743	.4936	80.65	10 277	.3981	912	11 457	12 369	.4791	1 715	14 084	.5455	

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,829

T OF COMMISSIONS, COSTS AND PROFIT OR LOSS

T COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S ORDER DATED MARCH 12, 1934

SCHEDULE NO. 7

COSTS							PROFIT OR LOSS											
EXCLUDING APPRAISALS				APPRAISAL ADJUST-MENTS.	INCLUDING APPRAISALS		BASED ON PRESENT COMMS. EXCLUDING APPRAISALS			BASED ON PRESENT COMMS. INCLUDING APPRAISALS			BASED ON SECY'S COMMS. EXCLUDING APPRAISALS			BASED ON SECY'S COMMS. INCLUDING APPRAISALS		
OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL			TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
		TOTAL	PER HEAD															
7 800	24 169	31 969	.0524	4 200	36 169	.0593	16 965	.0278	53.07	12 765	.0209	35.29	7 677	.0126	24.01	3 477	.0057	9.61
7 800	25 320	33 120	.0639	4 200	37 320	.0720	12 546	.0242	37.88	8 346	.0161	22.36	3 879	.0075	11.71	321	.0006	.86
2 550	8 321	10 871	.0902	1 399	12 270	.1018	1 884	.0156	17.33	485	.0040	3.95	537	.0045	4.94	1 936	.0161	15.78
16 413	35 349	51 762	.4102	6 767	58 529	.4639	236	.0018	.45	7 405	.0555	11.97	10 770	.0854	20.81	17 537	.1390	29.96
14 672	35 863	50 535	.3788	6 767	57 302	.4296	5 097	.0382	10.09	1 670	.0125	2.91	6 274	.0470	12.42	13 041	.0978	22.76
4 146	12 040	16 186	.3601	2 253	18 439	.4102	4 299	.0956	26.56	2 046	.0455	11.10	112	.0025	.69	2 141	.0476	11.61
5 378	9 344	14 722	.5190	2 622	17 344	.6114	1 [illegible]	[illegible]	[illegible]	3 068	.1081	17.68	3 [illegible]	.1190	23.08	6 020	.2122	34.71
4 178	7 918	12 096	.5847	2 622	14 718	.7115	–	–	–	2 628	.1267	17.86	4 501	.1299	20.66	5 123	.2476	34.81
1 597	2 868	4 465	.5376	873	5 338	.6427	–	–	–	873	.1051	16.36	1 323	.1111	20.67	1 796	.2163	33.66
712	875	1 587	.5578	488	2 075	.7293	[illegible]	[illegible]	[illegible]	270	.0949	13.01	471	.1656	29.68	954	.3371	46.02
710	871	1 581	.4405	488	2 069	.5765	–	–	–	409	.1140	19.77	409	.1140	25.87	897	.2501	43.35
147	209	356	.5705	163	519	.8317	–	–	–	164	.2628	31.61	142	.1424	25.85	255	.4087	49.13
4 272	18 214	22 486	.3768	2 848	25 334	.4246	1 095	.0184	4.87	1 793	.0299	6.92	4 185	.0701	18.61	7 [illegible]	.1193	27.76
3 440	15 411	18 851	.3755	2 848	21 699	.4322	[illegible]	[illegible]	[illegible]	2 954	.0588	13.51	4 303	.0857	22.83	7 151	.1424	32.96
573	4 695	5 268	.2278	948	6 216	.2688	1 199	.0519	22.76	251	.0109	4.04	249	.0108	4.73	1 [illegible]	.0518	19.21
9 079	22 589	31 668	.3118	1 921	33 589	.3307	1 [illegible]	[illegible]	[illegible]	3 898	.0384	11.50	7 258	.0714	21.50	2 [illegible]	.0933	28.08
3 975	14 905	18 880	.3295	1 350	20 230	.3530	1 857	.0324	9.84	507	.0088	2.51	2 152	.0376	11.02	3 [illegible]	.0616	17.43
1 298	5 460	6 708	.4129	450	7 158	.4406	[illegible]	[illegible]	8.57	1 [illegible]	.0631	14.32	1 [illegible]	.1096	24.84	2 [illegible]	.1355	30.75
18 563	24 819	43 382	.3526	4 435	47 817	.3886	1 [illegible]	.0072	2.03	5 316	.0432	11.12	9 [illegible]	.0743	21.05	13 [illegible]	.1104	28.42
15 861	26 757	42 618	.3370	4 435	47 053	.3719	–	–	–	4 435	.0351	9.43	9 [illegible]	.0695	18.74	12 [illegible]	.1005	27.02
6 715	12 692	19 407	.4888	1 477	20 884	.5260	1 [illegible]	[illegible]	21.40	5 [illegible]	.1918	36.98	4 [illegible]	.1703	32.66	6 [illegible]	.2145	41.18
4 793	3 615	8 408	.3685	728	7 615	.3337	148	.0065	1.76	645	.0283	8.47	2 [illegible]	.0877	23.31	1 [illegible]	.0930	15.67
3 770	4 198	7 968	.4236	207	7 175	.3815	–	–	–	793	.0422	11.05	1 288	.0961	22.44	1 [illegible]	.1529	19.67
942	1 358	2 300	.4239	98	2 102	.3874	–	–	–	198	.0365	9.42	516	.0951	22.43	1 [illegible]	.2566	15.21
1 131	2 199	3 330	.3118	869	4 199	.3932	92	.0086	2.70	961	.0900	22.89	762	.0713	22.86	1 631	.1527	38.84
523	452	975	.3032	289	1 264	.3930					.0899	22.86	202	.0628	20.72	491	.1527	36.65
25 600	104 561	130 161	.3462	14 400	144 561	.3845	16 353	.0435	12.56	1 953	.0052	1.35	17 199	.0456	13.22	31 599	.0840	21.86
22 131	81 588	103 719	.2907	14 400	118 119	.3310	36 460	.1022	35.15	22 060	.0618	18.68	4 359	.0122	4.20	10 041	.0281	9.50
6 912	27 877	34 789	.3397	4 795	39 584	.3865	10 020	.0978	28.80	5 225	.0510	13.20	241	.0024	.69	5 036	.0492	12.72
2 017	3 154	5 171	.5580	1 583	6 754	.7289	79	.0085	1.53	1 662	.1794	24.61	1 132	.1222	21.89	2 715	.2930	40.20
		[illegible]	[illegible]	1 583	5 056	.8536	–	–	–	1 583	.2673	31.31	716	.1212	20.67	2 301	.3885	45.51
														[illegible]	20.68	875	.4907	39.61

7 800	24 169	31 969	.0524	4 200	36 169	.0593	16 965	.0278	53.07	12 765	.0209	35.29	7 677	.0126	24.01	3 477	.0057	9.61
7 800	25 320	33 120	.0639	4 200	37 320	.0720	12 546	.0242	37.88	8 346	.0161	22.36	3 879	.0075	11.71	321	.0006	.86
2 550	8 321	10 871	.0902	1 359	12 270	.1018	1 884	.0156	17.33	485	.0040	3.95	537	.0045	4.94	1 936	.0161	15.78
16 413	35 349	51 762	.4102	6 767	58 529	.4639	238	.0018	.46	7 005	.0555	11.97	10 770	.0854	20.81	17 537	.1390	29.96
14 672	35 863	50 535	.3788	6 767	57 302	.4296	5 097	.0382	10.09	1 670	.0125	2.91	6 274	.0470	12.42	13 041	.0978	22.76
4 146	12 040	16 186	.3601	2 253	18 439	.4102	4 299	.0956	26.56	2 046	.0455	11.10	112	.0025	.69	2 141	.0476	11.61
5 378	9 344	14 722	.5190	2 622	17 344	.6114	44	.0157	3.03	3 088	.1081	17.69	3 358	.1198	23.08	6 020	.2122	34.71
4 178	7 918	12 096	.5847	2 622	14 718	.7115	–	–	–	2 622	.1267	17.80	2 501	.1209	20.66	5 123	.2476	34.85
1 597	2 868	4 465	.5376	873	5 338	.6427	–	–	–	873	.1051	16.36	923	.1111	20.67	1 796	.2163	33.64
712	875	1 587	.5578	488	2 075	.7293	82	.0288	5.17	520	.2004	27.47	471	.1656	29.68	959	.3371	46.22
710	871	1 581	.4405	488	2 069	.5765	–	–	–	409	.1340	23.39	409	.1140	25.87	897	.2503	43.35
147	209	356	.5705	163	519	.8317	–	–	–	163	.2616	31.41	92	.1474	25.85	255	.4082	49.13
4 272	18 214	22 486	.3768	2 848	25 334	.4246	1 095	.0184	4.87	1 723	.0294	6.92	4 185	.0701	18.61	7 033	.1179	27.78
3 440	15 411	18 851	.3755	2 848	21 699	.4322	106	.0021	.56	2 454	.0508	13.61	4 303	.0857	22.83	7 151	.1424	32.05
573	4 695	5 268	.2278	948	6 216	.2688	1 199	.0519	22.76	251	.0109	4.04	249	.0108	4.73	1 197	.0518	19.28
9 079	22 589	31 668	.3118	1 921	33 589	.3307	1 027	.0101	2.25	3 899	.0384	11.60	7 758	.0764	24.50	8 622	.0849	28.82
3 975	14 905	18 880	.3295	1 350	20 230	.3530	1 857	.0324	9.84	507	.0088	2.51	2 180	.0380	11.55	3 552	.0616	17.45
1 248	5 460	6 708	.4129	450	7 158	.4406	275	.0384	8.57	1 049	.0314	14.32	1 767	.1088	26.34	2 217	.1365	30.97
18 563	24 819	43 382	.3526	4 435	47 817	.3886	861	.0022	2.03	5 316	.0432	11.12	9 143	.0743	24.04	13 278	.1104	28.40
15 861	26 757	42 618	.3370	4 435	47 053	.3719	–	–	–	4 435	.0351	9.43	9 265	.0955	19.44	12 728	.1005	27.05
6 715	12 692	19 407	.4888	1 477	20 884	.5260	4 152	.1046	21.40	5 630	.1418	26.96	8 419	.1793	30.68	8 508	.2165	41.16
4 793	3 615	8 408	.3685	793	7 615	.3337	148	.0065	1.76	645	.0283	8.47	2 304	.0872	23.31	1 204	.0530	15.69
3 770	4 198	7 968	.4236	793	7 175	.3815	–	–	–	793	.0422	11.05	1 786	.0951	22.44	902	.0529	13.67
942	1 358	2 300	.4239	98	2 102	.3874	–	–	–	198	.0365	9.42	516	.0951	22.43	318	.0586	15.43
1 131	2 199	3 330	.3118	869	4 199	.3932	96	.0088	2.70	961	.0900	22.89	762	.0713	22.68	1 631	.1527	38.84
523	452	975	.3032	289	1 264	.3930					.0899	22.86	202	.0628	20.76	491	.1527	38.85
25 600	104 561	130 161	.3462	14 400	144 561	.3845	16 353	.0435	12.56	1 953	.0052	1.35	17 199	.0456	13.23	31 599	.0840	21.86
22 131	81 588	103 719	.2907	14 400	118 119	.3310	36 460	.1022	35.15	22 060	.0618	18.68	4 359	.0122	4.20	10 041	.0281	8.50
6 912	27 877	34 789	.3397	4 795	39 584	.3865	10 020	.0978	28.80	5 225	.0510	13.20	241	.0024	.69	5 036	.0492	12.78
2 017	3 154	5 171	.5580	1 583	6 754	.7289	79	.0085	1.53	1 662	.1794	24.61	1 132	.1222	21.69	2 715	.2930	40.20
979	2 494	3 473	.5864	1 583	5 056	.8536	–	–	–	1 583	.2673	31.31	718	.1212	20.62	2 301	.3885	45.51
453	1 229	1 682	.8087	527	2 209	1.0620	–	–	–	527	.2534	23.86	348	.1673	20.69	875	.4207	39.61
2 352	2 903	5 255	.3814	352	4 903	.3558	395	.0287	7.52	43	.0031	.88	1 400	.1016	26.64	1 048	.0761	21.38
1 107	1 946	3 053	.3527	117	2 936	.3392	–	–	–	117	.0135	3.99	631	.0729	20.62	514	.0594	17.50
7 139	20 492	27 631	.3569	6 651	34 282	.4428	1 025	.0132	3.71	7 676	.0991	22.39	5 928	.0766	21.46	12 579	.1625	36.70
6 893	30 572	37 465	.4257	6 651	44 116	.5012	12 096	.1374	32.29	5 445	.0619	12.34	2 962	.0337	7.91	3 689	.0419	8.36
2 940	9 167	12 107	.4513	2 640	14 747	.5497	2 868	.1069	23.69	228	.0085	1.55	108	.0040	.89	2 532	.0944	17.41
5 140	37 501	42 641	.4228	6 860	49 501	.4909	479	.0047	1.12	7 339	.0728	14.84	8 637	.0856	20.26	15 497	.1537	31.37
3 051	37 772	40 823	.4326	6 860	47 683	.5052	–	–	–	6 860	.0727	14.39	7 899	.0837	19.39	14 759	.1564	30.39
912	11 457	12 369	.4791	1 715	14 084	.5455	374	.0145	3.02	1 341	.0519	9.52	2 092	.0810	16.90	3 807	.1475	27.02

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN
EQUITY NO. 13,829

STATEMENT OF COMMISSIONS, COSTS AND

UNDER PRESENT COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S

NOTE:- The 1934 figures cover Jany. Feby. Mar. & Apr. unless otherwise indicated.

FIRM NO.	NAME OF FIRM	YEAR	NUMBER OF HEAD	COMMISSIONS					COSTS						
				ACTUAL		% OF ACTUAL	SECRETARY'S ORDER		EXCLUDING APPRAISALS				APPRAISAL ADJUST-MENTS.	INCLUDING APPRAISALS	
				TOTAL	PER HEAD		TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL	PER HEAD		TOTAL	PER HEA
71	WOOD BROTHERS	1932	280 425	77 790	.2774	78.82	61 314	.2186	-	71 702	71 702	.2557	-	71 702	.2557
		1933	226 599	69 138	.3051	78.82	54 495	.2405	-	59 641	59 641	.2632	-	59 641	.2632
		1934	66 068	22 492	.3404	78.82	17 728	.2683	-	17 742	17 742	.2685	-	17 742	.2685
72	JOHN PATTERSON & SON	1932	5 450	1 095	.2009	77.78	852	.1563	745	460	1 205	.2211	456	1 661	.3048
		1933	1 996	1 061	.5316	77.78	825	.4133	514	547	1 061	.5316	456	1 517	.7600
		1934	637	314	.4929	77.78	244	.3830	193	121	314	.4961	151	465	.7300
73	PETERSON, TURNBULL & CO.	1932	80 284	33 351	.4154	77.75	25 930	.3230	11 520	21 039	32 559	.4055	5 680	38 239	.4763
		1933	89 852	40 113	.4464	77.75	31 188	.3471	11 520	23 780	35 300	.3929	5 680	40 980	.4561
		1934	29 294	13 941	.4759	77.75	10 839	.3700	4 000	7 711	11 711	.3998	1 891	13 602	.4643
74	PRITCHARD COM. CO.	1932	11 185	4 615	.4126	79.32	3 661	.3273	3 371	6 097	9 468	.8465	2 629	12 097	1.0815
		1933	(DECEASED)												
		1934	(DECEASED)												
75	QUINN COM. CO.	1932	57 570	30 280	.5260	80.84	24 478	.4252	8 946	19 890	28 836	.5009	3 018	31 854	.5533
		1933	40 568	21 293	.5249	80.84	17 213	.4243	7 847	12 579	20 426	.5035	3 018	23 444	.5779
	(JAN. & FEB.)	1934	6 607	3 707	.5611	80.84	2 997	.4536	1 256	2 050	3 306	.5004	503	3 809	.5765
76	GLEN K. WOOD & CO.	1932	8 173	2 149	.2629	79.86	1 716	.2100	1 404	808	2 212	.2706	204	2 008	.2457
		1933	6 513	1 498	.2300	79.86	1 196	.1836	787	711	1 498	.2302	204	1 294	.1988
		1934	1 370	676	.4934	79.86	540	.3942	424	252	676	.4942	68	608	.4445
77	RICE BROTHERS	1932	165 348	70 982	.4293	77.06	54 699	.3308	11 640	61 600	73 240	.4430	12 610	85 850	.5192
		1933	189 610	88 489	.4667	77.06	68 190	.3596	11 640	70 045	81 685	.4308	12 610	94 295	.4973
		1934	67 810	28 334	.4178	77.06	21 834	.3220	4 000	21 352	25 352	.3739	4 199	29 551	.4358
78	ALEX RINDERLE & CO.	1932	84 888	25 260	.2976	79.94	20 193	.2379	9 430	16 043	25 473	.3001	570	26 043	.3068
		1933	86 209	28 305	.3283	79.94	22 627	.2625	7 438	20 867	28 305	.3283	570	28 875	.3349
		1934	26 070	9 396	.3604	79.94	7 511	.2882	3 727	5 669	9 396	.3604	190	9 586	.3677
79	ROACH L. S. COM. CO.	1932	21 319	11 337	.5318	85.91	9 740	.4569	3 750	7 892	11 642	.5461	4 750	16 392	.7689
		1933	18 079	9 424	.5213	85.91	8 096	.4478	3 996	5 370	9 366	.5181	4 750	14 116	.7808
	(JAN. MAR. & APRIL)	1934	3 664	1 884	.5142	85.91	1 619	.4419	872	1 012	1 884	.5166	1 188	3 072	.8384
80	CHAS. O. ROBINSON & CO.	1932	63 247	31 635	.5002	75.42	23 859	.3772	9 600	22 895	32 495	.5138	400	32 895	.5201
		1933	36 469	22 599	.6198	75.42	17 044	.4674	9 600	17 693	27 493	.7539	400	27 893	.7648
	(JAN. FEB. & MARCH)	1934	6 525	4 271	.6546	75.42	3 221	.4936	2 400	3 825	6 225	.9540	100	6 325	.9693
81	ROSENBAUM BROTHERS	1932	153 777	53 436	.3475	79.38	42 417	.2758	17 153	43 581	60 734	.3950	16 140	76 874	.4999
		1933	112 290	51 519	.4588	79.38	40 896	.3642	8 700	41 664	50 364	.4485	8 513	58 877	.5243

NO.	NAME OF FIRM	YEAR	HEAD	TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL TOTAL	TOTAL PER HEAD	ADJUST-MENTS.	TOTAL	PER HEAD
71	WOOD BROTHERS	1932	280 425	77 790	.2774	78.82	61 314	.2186	-	71 702	71 702	.2557	-	71 702	.2557
		1933	226 599	69 138	.3051	78.82	54 495	.2405	-	59 641	59 641	.2632	-	59 641	.2632
		1934	66 068	22 492	.3404	78.82	17 728	.2683	-	17 742	17 742	.2685	-	17 742	.2685
72	JOHN PATTERSON & SON	1932	5 450	1 095	.2009	77.78	852	.1563	745	460	1 205	.2211	436	1 661	.3048
		1933	1 996	1 061	.5316	77.78	825	.4133	514	547	1 061	.5316	456	1 517	.7600
		1934	637	314	.4929	77.78	244	.3830	193	121	314	.4961	151	465	.7300
73	PETERSON, TURNBULL & CO.	1932	80 284	33 351	.4154	77.75	25 930	.3230	11 520	21 039	32 559	.4055	5 680	38 239	.4763
		1933	89 852	40 113	.4464	77.75	31 188	.3471	11 520	23 780	35 300	.3929	5 680	40 980	.4561
		1934	29 294	13 941	.4759	77.75	10 839	.3700	4 000	7 711	11 711	.3998	1 891	13 602	.4643
74	PRITCHARD COM. CO.	1932	11 185	4 615	.4126	79.32	3 661	.3273	3 371	6 097	9 468	.8465	2 629	12 097	1.0815
		1933	(DECEASED)												
		1934	(DECEASED)												
75	QUINN COM. CO.	1932	57 570	30 280	.5260	80.84	24 478	.4252	8 946	19 890	28 836	.5009	3 018	31 854	.5533
		1933	40 568	21 293	.5249	80.84	17 213	.4243	7 847	12 579	20 426	.5035	3 018	23 444	.5779
	(JAN. & FEB.)	1934	6 607	3 707	.5611	80.84	2 997	.4536	1 256	2 050	3 306	.5004	503	3 809	.5765
76	GLEN K. WOOD & CO.	1932	8 173	2 149	.2629	79.86	1 716	.2100	1 404	808	2 212	.2706	204	2 008	.2457
		1933	6 513	1 498	.2300	79.86	1 196	.1836	787	711	1 498	.2302	204	1 294	.1988
		1934	1 370	676	.4934	79.86	540	.3942	424	252	676	.4942	68	608	.4445
77	RICE BROTHERS	1932	165 348	70 982	.4293	77.06	54 699	.3308	11 640	61 600	73 240	.4430	12 610	85 850	.5192
		1933	189 610	88 489	.4667	77.06	68 190	.3596	11 640	70 045	81 685	.4308	12 610	94 295	.4973
		1934	67 810	28 334	.4178	77.06	21 834	.3220	4 000	21 352	25 352	.3739	4 199	29 551	.4358
78	ALEX RINDERLE & CO.	1932	84 888	25 260	.2976	79.94	20 193	.2379	9 430	16 043	25 473	.3001	570	26 043	.3068
		1933	86 209	28 305	.3283	79.94	22 627	.2625	7 438	20 867	28.305	.3283	570	28 875	.3349
		1934	26 070	9 396	.3604	79.94	7 511	.2882	3 727	5 669	9 396	.3604	190	9 586	.3677
79	ROACH L. S. COM. CO.	1932	21 319	11 337	.5318	85.91	9 740	.4569	3 750	7 892	11 642	.5461	4 750	16 392	.7689
		1933	18 079	9 424	.5213	85.91	8 096	.4478	3 996	5 370	9 366	.5181	4 750	14 116	.7808
	(JAN. MAR. & APRIL)	1934	3 664	1 884	.5142	85.91	1 619	.4419	872	1 012	1 884	.5166	1 188	3 072	.8384
80	CHAS. O. ROBINSON & CO.	1932	63 247	31 635	.5002	75.42	23 859	.3772	9 600	22 895	32 495	.5138	400	32 895	.5201
		1933	36 469	22 599	.6198	75.42	17 044	.4674	9 600	17 893	27 493	.7539	400	27 893	.7649
	(JAN. FEB. & MARCH)	1934	6 525	4 271	.6546	75.42	3 221	.4936	2 400	3 825	6 225	.9540	100	6 325	.9693
81	ROSENBAUM BROTHERS	1932	153 777	53 436	.3475	79.38	42 417	.2758	17 153	43 581	60 734	.3950	16 140	76 874	.4999
		1933	112 290	51 519	.4588	79.38	40 896	.3642	8 700	41 664	50 364	.4485	8 513	58 877	.5243
		1934	28 766	16 842	.5855	79.38	13 369	.4648	3 333	17 082	20 415	.7097	2 837	23 252	.8100
82	SARSFIELD & SCHROCK COM. CO.	1932	84 880	14 659	.1727	83.56	12 249	.1443	9 930	5 070	15 000	.1767	2 070	17 070	.2011
		1933	41 672	11 844	.2842	83.56	9 897	.2375	5 638	6 206	11 844	.2842	2 070	13 914	.3339
		1934	18 474	5 690	.3080	83.56	4 755	.2574	3 268	2 422	5 690	.3081	690	6 380	.3454
83	YANCEY, SINNARD & ROBERTS	1932	100 597	37 698	.3747	73.33	27 644	.2748	6 685	31 303	37 988	.3776	10 665	48 653	.4836
		1933	91 742	40 333	.4396	73.33	29 576	.3224	7 871	25 229	33 100	.3608	10 665	43 765	.4770
		1934	31 617	15 847	.5012	73.33	11 621	.3676	6 150	9 583	15 733	.4976	3 551	19 284	.6099
84	GEO. M. BROWNSON & CO.	1932	19 614	5 747	.2930	81.57	4 688	.2390	3 755	2 164	5 919	.3018		5 164	.2633
		1933	25 591	6 414	.2506	81.57	5 232	.2044	4 100	2 314	6 414	.2506		5 659	.2211
		1934	(INCLUDED IN NORTHWESTERN LIVESTOCK COM. CO.)												

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,829

NT OF COMMISSIONS, COSTS AND PROFIT OR LOSS

ENT COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S ORDER DATED MARCH 12, 1934

SCHEDULE NO. 7

COSTS							PROFIT OR LOSS											
EXCLUDING APPRAISALS				APPRAISAL ADJUST-MENTS.	INCLUDING APPRAISALS		BASED ON PRESENT COMMS. EXCLUDING APPRAISALS			BASED ON PRESENT COMMS. INCLUDING APPRAISALS			BASED ON SECY'S COMMS. EXCLUDING APPRAISALS			BASED ON SECY'S COMMS. INCLUDING APPRAISALS		
OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL TOTAL	TOTAL PER HEAD		TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
-	71 702	71 702	.2557	-	71 702	.2557	6 088	.0217	8.49	6 088	.0217	8.49	10 388	.0370	14.49	10 388	.0370	14.49
-	59 641	59 641	.2632	-	59 641	.2632	9 497	.0419	15.92	9 497	.0419	15.92	5 146	.0227	8.63	5 146	.0227	8.63
-	17 742	17 742	.2685	-	17 742	.2685	4 750	.0719	26.77	4 750	.0719	26.77	14	.0002	.08	14	.0002	.08
745	460	1 205	.2211	456	1 661	.3048	110	.0202	9.13	566	.1039	34.06	353	.0648	29.32	809	.1484	48.71
514	547	1 061	.5316	456	1 517	.7600	-	-	-	456	.2285	30.06	236	.1182	22.24	692	.3467	45.62
193	121	314	.4961	151	465	.7300	-	-	-	151	.2370	32.47	70	.1099	22.29	221	.3469	47.53
11 520	21 039	32 559	.4055	5 680	38 239	.4763	792	.0099	2.43	4 888	.0609	12.78	6 629	.0826	20.36	12 309	.1533	32.19
1' 520	23 780	35 300	.3929	5 680	40 980	.4561	4 813	.0536	13.63	867	.0096	2.12	4 112	.0458	11.65	9 792	.1090	23.89
4 000	7 711	11 711	.3998	1 891	13 602	.4643	2 230	.0761	19.04	339	.0116	2.49	872	.0298	7.45	2 763	.0943	20.31
3 371	6 097	9 468	.8465	2 629	12 097	1.0815	4 853	.4339	51.26	7 482	.6689	61.84	5 807	.5192	61.33	8 436	.7542	69.74
8 946	19 890	28 836	.5009	3 018	31 854	.5533	1 444	.0251	5.01	1 574	.0273	4.94	4 358	.0757	15.11	7 376	.1281	23.16
7 847	12 579	20 426	.5035	3 018	23 444	.5779	867	.0214	4.24	2 151	.0530	9.18	3 213	.0792	15.73	6 231	.1536	26.58
1 256	2 050	3 306	.5004	503	3 809	.5765	401	.0607	12.13	102	.0154	2.68	309	.0468	9.35	812	.1229	21.32
1 404	808	2 212	.2706	204	2 008	.2457	63	.0077	2.85	141	.0172	7.02	496	.0607	22.42	292	.0357	14.54
787	711	1 498	.2302	204	1 294	.1988	-	-	-	204	.0313	13.77	302	.0464	20.16	98	.0150	7.57
424	252	676	.4942	68	608	.4445	-	-	-	68	.0496	11.18	136	.0993	20.12	68	.0496	11.48
11 640	61 600	73 240	.4430	12 610	85 850	.5192	2 258	.0137	3.08	14 868	.0899	17.32	18 541	.1121	25.32	31 151	.1884	36.29
11 640	70 045	81 685	.4308	12 610	94 295	.4973	6 804	.0359	8.33	5 806	.0306	6.16	13 495	.0712	16.52	26 105	.1377	27.68
4 000	21 352	25 352	.3739	4 199	29 551	.4358	2 982	.0440	11.76	1 217	.0179	4.12	3 518	.0519	13.68	7 717	.1138	26.11
9 430	16 043	25 473	.3001	570	26 043	.3068	213	.0025	.84	783	.0092	3.01	5 280	.0622	20.73	5 850	.0689	22.46
7 438	20 867	28 305	.3283	570	28 875	.3349	-	-	-	570	.0066	1.97	5 678	.0659	20.06	6 248	.0725	21.64
3 727	5 669	9 396	.3604	190	9 586	.3677	-	-	-	190	.0073	1.98	1 885	.0723	20.06	2 075	.0796	21.65
3 750	7 892	11 642	.5461	4 750	16 392	.7689	305	.0143	2.62	5 055	.2371	30.84	1 902	.0892	16.34	6 652	.3120	40.58
3 996	5 370	9 366	.5181	4 750	14 116	.7808	58	.0032	.62	4 692	.2595	33.24	1 270	.0702	13.56	6 020	.3330	42.65
872	1 012	1 884	.5166	1 188	3 072	.8384	-	-	-	1 188	.3242	38.67	265	.0723	14.07	1 453	.3966	47.30
9 600	22 895	32 495	.5138	400	32 895	.5201	860	.0136	2.65	1 260	.0199	3.83	8 636	.1365	26.58	9 036	.1429	27.47
9 600	17 893	27 493	.7539	400	27 893	.7648	4 894	.1342	17.80	5 294	.1452	18.98	10 449	.2865	38.01	10 849	.2975	38.90
2 400	3 825	6 225	.9540	100	6 325	.9693	1 954	.2995	31.39	2 054	.3148	32.47	3 004	.4604	48.26	3 104	.4757	49.06
17 153	43 581	60 734	.3950	16 140	76 874	.4999	7 298	.0475	12.02	23 436	.1524	30.49	18 317	.1191	30.16	34 457	.2241	44.82
	41 664	50 364	.4485	8 513	58 877	.5243	1 155	.0103	2.29	7 358	.0655	12.50	9 468	.0843	18.80	17 981	.1601	30.54
												27.57	7 046	.2449	34.51	9 883	.3436	42.50

SALARIES	SALY & EXPS	TOTAL	PER HEAD	MENTS.	TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
–	71 702	71 702	.2557	–	71 702	.2557	6 088	.0217	8.49	6 088	.0217	8.49	10 388	.0370	14.49	10 388	.0370	14.49
–	59 641	59 641	.2632	–	59 641	.2632	9 497	.0419	15.92	9 497	.0419	15.92	5 146	.0227	8.63	5 146	.0227	8.63
–	17 742	17 742	.2685	–	17 742	.2685	4 750	.0719	26.77	4 750	.0719	26.77	14	.0002	.08	14	.0002	.08
745	460	1 205	.2211	456	1 661	.3048	110	.0202	9.13	566	.1039	34.06	353	.0648	29,32	809	.1484	48.71
514	547	1 061	.5316	456	1 517	.7600	–	–	–	456	.2285	30.06	236	.1182	22.24	692	.3467	45.62
193	121	314	.4961	151	465	.7300	–	–	–	151	.2370	32.47	70	.1099	22,29	221	.3469	47.53
11 520	21 039	32 559	.4055	5 680	38 239	.4763	792	.0099	2.43	4 888	.0609	12.78	6 629	.0826	20.36	12 309	.1533	32.19
11 520	23 780	35 300	.3929	5 680	40 980	.4561	4 813	.0536	13.63	867	.0096	2.12	4 112	.0458	11.65	9 792	.1090	23.89
4 000	7 711	11 711	.3998	1 891	13 602	.4643	2 230	.0761	19.04	339	.0116	2.49	872	.0298	7.45	2 763	.0943	20.31
3 371	6 097	9 468	.8465	2 629	12 097	1.0815	4 853	.4339	51.26	7 482	.6689	61.84	5 807	.5192	61.33	8 436	.7542	69.74
8 946	19 890	28 836	.5009	3 018	31 854	.5533	1 444	.0251	5.01	1 574	.0273	4.94	4 358	.0757	15.11	7 376	.1281	23.16
7 847	12 579	20 426	.5035	3 018	23 444	.5779	867	.0214	4.24	2 151	.0530	9.18	3 213	.0792	15.73	6 231	.1536	26.58
1 256	2 050	3 306	.5004	503	3 809	.5765	401	.0607	12.13	102	.0154	2.68	309	.0468	9.35	812	.1229	21.32
1 404	808	2 212	.2706	204	2 008	.2457	63	.0077	2.85	141	.0172	7.02	496	.0607	22.42	292	.0357	14.54
787	711	1 498	.2302	204	1 294	.1988	–	–	–	204	.0313	15.77	302	.0464	20.16	98	.0150	7.57
424	252	676	.4942	68	608	.4445	–	–	–	68	.0496	11.18	136	.0993	20.12	68	.0496	11.18
11 640	61 600	73 240	.4430	12 610	85 850	.5192	2 256	.0137	3.08	14 868	.0892	17.32	18 541	.1121	25,32	31 151	.1884	36.29
11 640	70 045	81 685	.4308	12 610	94 295	.4973	6 804	.0359	8,33	5 806	.0306	6.16	13 495	.0712	16,52	25 105	.1377	27.68
4 000	21 352	25 352	.3739	4 199	29 551	.4358	2 982	.0440	11.76	1 217	.0179	4.12	3 518	.0519	13.88	7 717	.1138	26.11
9 430	16 043	25 473	.3001	570	26 043	.3068	213	.0025	.84	763	.0092	3,01	5 280	.0622	20.73	5 850	.0689	22.46
7 438	20 867	28.305	.3283	570	28 875	.3349	–	–	–	570	.0066	1.97	5 678	.0659	20.06	6 248	.0725	21.64
3 727	5 669	9 396	.3604	190	9 586	.3677	–	–	–	190	.0073	1,98	1 885	.0723	20,06	2 075	.0796	21.65
3 750	7 892	11 642	.5461	4 750	16 392	.7689	305	.0143	2,62	5 055	.2371	30,84	1 902	.0892	16.34	6 652	.3120	40,58
3 996	5 370	9 366	.5181	4 750	14 116	.7808	58	.0032	.62	4 692	.2595	33.24	1 270	.0702	13.56	6 020	.3330	42.65
872	1 012	1 884	.5166	1 188	3 072	.8384	–	–	–	1 188	.3242	38.67	265	.0723	14.07	1 453	.3966	47.30
9 600	22 895	32 495	.5138	400	32 895	.5201	860	.0136	2.65	1 260	.0199	3.83	8 636	.1365	26.58	9 036	.1429	27.47
9 600	17 893	27 493	.7539	400	27 893	.7648	4 894	.1342	17.80	5 294	.1452	18.98	10 449	.2865	38.21	10 849	.2975	38.90
2 400	3 825	6 225	.9540	100	6 325	.9693	1 954	.2995	31.39	2 054	.3148	32.47	3 004	.4604	48.26	3 104	.4757	49.06
17 153	43 581	60 734	.3950	16 140	76 874	.4999	7 298	.0475	12.02	23 438	.1524	30.49	18 317	.1191	30.16	34 457	.2241	44.82
8 700	41 664	50 364	.4485	8 513	58 877	.5243	1 155	.0103	2,29	7 358	.0655	12.50	9 468	.0843	18.80	17 981	.1601	30.54
3 333	17 082	20 415	.7097	2 837	23 252	.8100	3 573	.1242	17.50	6 410	.2228	27.57	7 046	.2449	34.51	9 883	.3436	42.50
9 939	5 070	15 000	.1767	2 070	17 070	.2011	341	.0040	2.27	2 411	.0284	14.12	2 751	.0324	18.34	4 821	.0568	28.24
5 638	6 206	11 844	.2842	2 070	13 914	.3339	–	–	–	2 070	.0497	14.88	1 947	.0467	16.44	4 017	.0964	28.87
3 268	2 422	5 690	.3081	690	6 380	.3454	–	–	–	690	.0373	10.62	935	.0506	16.43	1 625	.0880	25.47
6 685	31 303	37 988	.3776	10 665	48 653	.4836	290	.0029	.76	10 955	.1089	22.52	10 344	.1029	27.23	21 009	.2088	43.18
7 871	25 229	33 100	.3608	10 665	43 765	.4770	7 233	.0788	21.85	3 432	.0374	7.64	3 524	.0384	10.65	14 189	.1551	32.42
6 150	9 583	15 733	.4976	3 551	19 284	.6099	114	.0036	.72	3 437	.1087	17.82	4 112	.1301	26.14	7 663	.2424	39.74
3 755	2 164	5 919	.3018		5 164	.2633	172	.0088	2.91	583	.0297	11.29	1 231	.0628	20,80	476	.0243	9.22
4 100	2 314	6 414	.2506		5 659	.2211	–	–	–	755	.0296	13.38	1 182	.0462	18,43	427	.0166	7.55

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN
EQUITY NO. 13,829

STATEMENT OF COMMISSIONS, COSTS AND

UNDER PRESENT COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S

NOTE:- The 1934 figures cover Jany. Feby. Mar. & Apr. unless otherwise indicated.

FIRM NO.	NAME OF FIRM	YEAR	NUMBER OF HEAD	COMMISSIONS					COSTS						
				ACTUAL		SECRETARY'S ORDER			EXCLUDING APPRAISALS				APPRAISAL ADJUST-MEN'S.	INCLUDING APPRAISALS	
				TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS.	TOTAL	PER HEAD		TOTAL	PER HEAD
85	SCHROEDER L. S. COM. CO.	1932	57 848	19 669	.3400	81.17	15 965	.2760	3 790	11 239	15 029	.2598	3 677	18 706	.3234
		1933	75 663	25 312	.3345	81.17	20 546	.2715	3 600	16 273	19 873	.2627	3 717	23 590	.3118
		1934	27 603	9 527	.3451	81.17	7 733	.2802	2 040	6 155	8 195	.2969	1 238	9 433	.3417
86	SHELDON COM. CO.	1932	13 279	3 962	.2984	82.97	3 287	.2475	2 087	1 996	4 083	.3075	87	3 996	.3009
		1933	8 573	2 691	.3139	82.97	2 233	.2605	1 229	1 462	2 691	.3139	87	2 604	.3037
		1934	2 594	791	.3049	82.97	656	.2529	410	381	791	.3076	29	762	.2938
87	SHERWOOD & SON	1932	41 750	16 000	.3832	79.32	12 691	.3040	6 198	10 391	16 589	.3973	1 002	17 591	.4213
		1933	52 063	19 683	.3781	79.32	15 613	.2999	9 841	11 697	21,538	.4137	1 002	22 540	.4329
		1934	21 906	8 333	.3804	79.32	6 610	.3017	3 465	4 868	8 333	.3804	334	8 667	.3957
88	W. E. YOUNG (JAN. FEB. & MARCH)	1932	1 898	782	.4120	74.32	581	.3061	685	153	838	.4415	215	1 053	.5548
		1933	1 407	600	.4264	74.32	446	.3170	467	133	600	.4264	215	815	.5792
		1934	163	78	.4785	74.32	58	.3558	56	22	78	.5399	54	132	.8098
89	SINCLAIR COM. CO.	1932	756	397	.5251	79.32	315	.4167	181	1 631	1 812	2.3968	18	1 830	.4206
		1933	(OUT OF BUSINESS)												
		1934	(OUT OF BUSINESS)												
90	W. R. SMITH & SON	1932	273 329	20 614	.0754	77.15	15 904	.0582	6 465	20 414	26 879	.0983	4 310	31 189	.1141
		1933	194 451	19 081	.0981	77.15	14 721	.0757	5 172	12 371	17 543	.0902	4 310	21 853	.1124
		1934	66 077	6 084	.0921	77.15	4 694	.0710	1 600	4 170	5 770	.0873	1 437	7 207	.1091
91	L. SPENCER & CO.	1932	26 601	6 960	.2616	79.32	5 521	.2075	3 709	6 031	9 740	.3661	291	10 031	.3771
		1933	32 940	12 192	.3701	79.32	9 671	.2936	3 614	6 272	9 886	.3001	291	10 177	.3090
		1934	(DESTROYED BY FIRE)												
92	STAFFORD BROTHERS	1932	98 491	40 356	.4097	78.56	31 704	.3219	5 334	28 184	33 518	.3403	4 191	37 709	.3829
		1933	112 080	53 516	.4775	78.56	42 042	.3751	5 334	38 484	43 818	.3910	4 191	48 009	.4283
		1934	29 493	17 273	.5857	78.56	13 570	.4601	2 800	12 945	15 745	.5339	1 395	17 140	.5812
93	STANDARD L. S. COM. CO.	1932	128 619	38 327	.2980	78.85	30 221	.2350	9 977	32 068	41 985	.3264	644	41 341	.3214
		1933	138 560	38 685	.2792	78.85	30 503	.2201	17 525	18 974	36 499	.2634	135	36 634	.2644
		1934	31 876	13 337	.4184	78.85	10 516	.3299	5 965	7 053	13 018	.4084	45	13 063	.4098
94	STARRETT L. S. COM. CO. (JAN. FEB. & MARCH)	1932	18 247	7 616	.4174	74.83	5 699	.3123	3 209	5 643	8 852	.4851	2 641	11 493	.6209
		1933	17 810	8 270	.4643	74.83	6 188	.3474	3 405	4 777	8 182	.4594	2 641	10 823	.6077
		1934	5 466	2 663	.4872	74.83	1 993	.3646	1 408	1 255	2 663	.4872	660	3 323	.6079
	STEWARD & MCILHANY	1932	5 261	3 031	.5761	79.32	2 404	.4570	1 677	1 671	3 348	.6364	823	4 171	.7928
		1933	2 606	1 705	.6543	79.32	1 352	.5188	958	747	1 705	.6539	823		

NO.	NAME OF FIRM		HEAD	TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL TOTAL	TOTAL PER HEAD	ADJUST-MEN'S.	TOTAL	PER HEAD
		1932	57 848	19 669	.3400	81.17	15 965	.2760	3 790	11 239	15 029	.2598	3 677	18 706	.3234
85	SCHROEDER L. S. COM. CO.	1933	75 663	25 312	.3345	81.17	20 546	.2715	3 600	16 273	19 873	.2627	3 717	23 590	.3118
		1934	27 603	9 527	.3451	81.17	7 733	.2802	2 040	6 155	8 195	.2969	1 238	9 433	.3417
		1932	13 279	3 962	.2984	82.97	3 287	.2475	2 087	1 996	4 083	.3075	87	3 996	.3009
86	SHELDON COM. CO.	1933	8 573	2 691	.3139	82.97	2 233	.2605	1 229	1 462	2 691	.3139	87	2 604	.3037
		1934	2 594	791	.3049	82.97	656	.2529	410	381	791	.3076	29	762	.2938
		1932	41 750	16 000	.3832	79.32	12 691	.3040	6 198	10 391	16 589	.3973	1 002	17 591	.4213
87	SHERWOOD & SON	1933	52 063	19 683	.3781	79.32	15 613	.2999	9 841	11 697	21 538	.4137	1 002	22 540	.4329
		1934	21 906	8 333	.3804	79.32	6 610	.3017	3 465	4 868	8 333	.3804	334	8 667	.3957
		1932	1 898	782	.4120	74.32	581	.3061	685	153	838	.4415	215	1 053	.5548
88	W. E. YOUNG	1933	1 407	600	.4264	74.32	446	.3170	467	133	600	.4264	215	815	.5792
	(JAN. FEB. & MARCH)	1934	163	78	.4785	74.32	58	.3558	56	22	78	.5399	54	132	.8098
		1932	756	397	.5251	79.32	315	.4167	181	1 631	1 812	2.3968	18	1 830	.4206
89	SINCLAIR COM. CO.	1933	(OUT OF BUSINESS)												
		1934	(OUT OF BUSINESS)												
		1932	273 329	20 614	.0754	77.15	15 904	.0582	6 465	20 414	26 879	.0983	4 310	31 189	.1141
90	W. R. SMITH & SON	1933	194 451	19 081	.0981	77.15	14 721	.0757	5 172	12 371	17 543	.0902	4 310	21 853	.1124
		1934	66 077	6 084	.0921	77.15	4 694	.0710	1 600	4 170	5 770	.0873	1 437	7 207	.1091
		1932	26 601	6 960	.2616	79.32	5 521	.2075	3 709	6 031	9 740	.3661	291	10 031	.3771
91	L. SPENCER & CO.	1933	32 940	12 192	.3701	79.32	9 671	.2936	3 614	6 272	9 886	.3001	291	10 177	.3090
		1934	(DESTROYED BY FIRE)												
		1932	98 491	40 356	.4097	78.56	31 704	.3219	5 334	28 184	33 518	.3403	4 191	37 709	.3829
92	STAFFORD BROTHERS	1933	112 080	53 516	.4775	78.56	42 042	.3751	5 334	38 484	43 818	.3910	4 191	48 009	.4283
		1934	29 493	17 273	.5857	78.56	13 570	.4601	2 600	12 945	15 745	.5339	1 395	17 140	.5812
		1932	128 619	38 327	.2980	78.85	30 221	.2350	9 977	32 068	41 985	.3264	644	41 341	.3214
93	STANDARD L. S. COM. CO.	1933	138 560	38 685	.2792	78.85	30 503	.2201	17 525	18 974	36 499	.2634	135	36 634	.2644
		1934	31 876	13 337	.4184	78.85	10 516	.3299	5 965	7 053	13 018	.4084	45	13 063	.4098
		1932	18 247	7 616	.4174	74.83	5 699	.3123	3 209	5 643	8 852	.4851	2 641	11 493	.6209
94	STARRETT L. S. COM. CO.	1933	17 810	8 270	.4643	74.83	6 188	.3474	3 405	4 777	8 182	.4594	2 641	10 823	.6077
	(JAN. FEB. & MARCH)	1934	5 466	2 663	.4872	74.83	1 993	.3646	1 408	1 255	2 663	.4872	660	3 323	.6079
		1932	5 261	3 031	.5761	79.32	2 404	.4570	1 677	1 671	3 348	.6364	823	4 171	.7928
95	STEWARD & MCILLHANY	1933	2 606	1 705	.6543	79.32	1 352	.5188	958	747	1 705	.6539	823	2 528	.9697
		1934	(NO BUSINESS)												
		1932	79 472	32 695	.4114	74.77	24 446	.3076	8 896	24 453	33 349	.4196	7 187	40 536	.5101
96	ST. JOHN COMPTON & DUNBAR	1933	41 251	21 168	.5132	74.77	15 827	.3837	2 600	13 604	16 204	.3928	4 029	20 233	.4905
		1934	11 593	5 470	.4718	74.77	4 090	.3528	442	5 469	5 911	.5099	1 342	7 253	.6256
		1932	151 225	52 670	.3483	82.38	43 390	.5738	19 575	34 488	54 063	.3575	10 425	64 488	.4264
97	STOCKMENS L. S. COM. CO.	1933	148 180	56 528	.3815	82.38	46 568	.3143	24 000	33 515	57 515	.3681	10 425	67 940	.4585
		1934	37 137	16 776	.4517	82.38	13 820	.3721	5 000	11 913	16 913	.4554	3 475	20 388	.5490
		1932	1 024	570	.5566	79.32	452	.4414	391	278	669	.6533	1 610	2 279	2.2256
98	C. H. ACKER & CO.	1933	562	490	.8737	79.32	389	.6932	245	245	490	.8719	1 610	2 100	3.7367
		1934	(DESTROYED BY FIRE)												

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,829

NT OF COMMISSIONS, COSTS AND PROFIT OR LOSS

NT COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S ORDER DATED MARCH 12, 1934

SCHEDULE NO. 7

COSTS							PROFIT OR LOSS											
EXCLUDING APPRAISALS				APPRAISAL ADJUST-MENTS.	INCLUDING APPRAISALS		BASED ON PRESENT COMMS. EXCLUDING APPRAISALS			BASED ON PRESENT COMMS. INCLUDING APPRAISALS			BASED ON SECY'S COMMS. EXCLUDING APPRAISALS			BASED ON SECY'S COMMS. INCLUDING APPRAISALS		
OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL			TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
		TOTAL	PER HEAD															
3 790	11 239	15 029	.2598	3 677	18 706	.3234	4 640	.0802	30.87	963	.0166	5.15	936	.0162	6.23	2 741	.0474	14.65
3 600	16 273	19 873	.2627	3 717	23 590	.3118	5 439	.0719	27.37	1 722	.0228	7.30	673	.0089	3.39	3 044	.0402	12.90
2 040	6 155	8 195	.2969	1 238	9 433	.3417	1 332	.0483	16.25	94	.0034	1.00	462	.0167	5.64	1 700	.0616	18.02
2 087	1 996	4 083	.3075	87	3 996	.3009	121	.0091	2.96	34	.0025	.85	796	.0599	19.50	709	.0534	17.74
1 229	1 462	2 691	.3139	87	2 604	.3037	–	–	–	87	.0101	3.34	458	.0534	17.02	371	.0433	14.25
410	381	791	.3076	29	762	.2938	–	–	–	29	.0112	3.81	135	.0520	17.07	106	.0409	13.91
6 198	10 391	16 589	.3973	1 002	17 591	.4213	589	.0141	3.55	1 591	.0381	9.04	3 898	.0934	23.50	4 900	.1174	27.86
9 841	11 697	21 538	.4137	1 002	22 540	.4329	1 855	.0356	8.61	2 857	.0549	12.68	5 925	.1138	27.51	6 927	.1331	30.73
3 465	4 868	8 333	.3804	334	8 667	.3957	–	–	–	334	.0152	3.85	1 723	.0787	20.68	2 057	.0939	23.73
685	153	838	.4415	215	1 053	.5548	56	.0295	6.68	271	.1428	25.74	257	.1354	30.67	472	.2487	44.82
467	133	600	.4264	215	815	.5792	–	–	–	215	.1528	26.38	154	.1095	25.67	369	.2623	45.28
56	22	78	.5399	54	132	.8098	–	–	–	54	.3313	40.91	20	.1227	25.64	74	.4540	56.00
181	1 631	1 812	2.3968	18	1 830	.4206	1 415	1.8717	78.09	1 433	1.8955	78.31	1 497	.8525	82.62	1 515	.2004	82.79
6 465	20 414	26 879	.0983	4 310	31 189	.1141	6 265	.0229	23.31	10 575	.0387	33.91	10 975	.0402	40.83	15 285	.0559	49.00
5 172	12 371	17 543	.0902	4 310	21 853	.1124	1 538	.0079	8.77	2 772	.0143	12.68	2 822	.0145	16.09	7 132	.0367	32.64
1 600	4 170	5 770	.0873	1 437	7 207	.1091	314	.0048	5.44	1 123	.0170	15.58	1 076	.0163	18.65	2 513	.0380	34.87
3 709	6 031	9 740	.3661	291	10 031	.3771	2 780	.1045	28.54	3 071	.1155	30.62	4 219	.1586	43.32	4 510	.1699	44.96
3 614	6 272	9 886	.3001	291	10 177	.3090	2 306	.0700	23.33	2 015	.0612	19.80	215	.0065	2.17	506	.0154	4.97
5 334	28 184	33 518	.3403	4 191	37 709	.3829	6 838	.0694	20.40	2 647	.0268	7.02	1 814	.0184	5.41	6 005	.0610	15.92
5 334	38 484	43 818	.3910	4 191	48 009	.4283	9 698	.0865	22.13	5 507	.0491	11.47	1 776	.0158	4.05	5 967	.0532	12.43
2 800	12 945	15 745	.5339	1 395	17 140	.5812	1 528	.0518	9.70	133	.0045	.78	2 175	.0737	13.82	3 570	.1210	20.83
9 977	32 068	41 985	.3264	644	41 341	.3214	3 658	.0284	8.71	3 014	.0234	7.29	11 764	.0915	28.02	11 120	.0865	26.90
17 525	18 974	36 499	.2634	135	36 634	.2644	2 186	.0158	5.99	2 051	.0148	5.60	5 996	.0433	16.43	6 131	.0442	16.74
5 965	7 053	13 018	.4084	45	13 063	.4098	319	.0100	2.45	274	.0086	2.10	2 502	.0785	19.22	2 547	.0799	19.50
3 209	5 643	8 852	.4851	2 641	11 493	.6209	1 236	.0677	13.96	3 877	.2125	33.37	6 153	.1728	35.62	5 794	.3175	50.41
3 405	4 777	8 182	.4594	2 641	10 823	.6077	88	.0049	1.08	2 553	.1433	23.59	1 994	.1120	24.37	4 635	.2602	42.83
1 408	1 255	2 663	.4872	660	3 323	.6079	–	–	–	660	.1207	19.86	670	.1226	25.16	1 330	.2433	40.02
1 677	1 671	3 348	.6364	823	4 171	.7928	317	.0603	9.47	1 140	.2167	27.33	944	.1794	28.20	1 767	.3359	42.36
958	747	1 705	.6539	823	2 528	.9697	–	–	–	823	.3158	32.56	353	.1355	20.70	1 176	.4513	46.52

3 790	11 239	15 029	.2598	3 677	18 706	.3234	4 640	.0802	30.87	963	.0166	5.15	936	.0162	6.23	2 741	.0474	14.65
3 600	16 273	19 873	.2627	3 717	23 590	.3118	5 439	.0719	27.37	1 722	.0228	7.30	673	.0089	3.39	3 044	.0402	12.90
2 040	6 155	8 195	.2969	1 238	9 433	.3417	1 332	.0483	16.25	94	.0034	1.00	462	.0167	5.64	1 700	.0616	18.02
2 087	1 996	4 083	.3075	87	3 996	.3009	121	.0091	2.96	34	.0025	.85	796	.0599	19.50	709	.0534	17.74
1 229	1 462	2 691	.3139	87	2 604	.3037	–	–	–	87	.0101	3.34	458	.0534	17.02	371	.0433	14.25
410	381	791	.3076	29	762	.2938	–	–	–	29	.0112	3.81	135	.0520	17.07	106	.0409	13.91
6 198	10 391	16 589	.3973	1 002	17 591	.4213	569	.0141	3.55	1 591	.0381	9.04	3 898	.0934	23.50	4 900	.1174	27.86
9 841	11 697	21 538	.4137	1 002	22 540	.4329	1 655	.0356	8.61	2 857	.0549	12.68	5 925	.1138	27.51	6 927	.1331	30.73
3 465	4 868	8 333	.3804	334	8 667	.3957	–	–	–	334	.0152	3.85	1 723	.0787	20.68	2 057	.0939	23.73
685	153	838	.4415	215	1 053	.5548	96	.0295	6.68	271	.1428	25.74	257	.1354	30.67	472	.2487	44.82
467	133	600	.4264	215	815	.5792	–	–	–	215	.1528	26.38	154	.1096	25.67	369	.2623	45.28
56	22	78	.5399	54	132	.8098	–	–	–	54	.3313	40.91	20	.1227	25.64	74	.4540	56.06
181	1 631	1 812	2.3968	18	1 830	.4206	1 415	1.8717	78.09	1 433	1.8955	78.31	1 497	.8525	82.62	1 515	.2004	82.79
6 465	20 414	26 879	.0983	4 310	31 189	.1141	6 285	.0229	23.31	10 575	.0387	33.91	10 975	.0402	40.83	15 285	.0559	49.00
5 172	12 371	17 543	.0902	4 310	21 853	.1124	1 538	.0079	8.77	2 772	.0143	12.66	2 822	.0145	16.09	7 132	.0367	32.64
1 600	4 170	5 770	.0873	1 437	7 207	.1091	314	.0048	5.44	1 123	.0170	15.56	1 076	.0163	18.65	2 513	.0380	34.87
3 709	6 031	9 740	.3661	291	10 031	.3771	2 780	.1045	28.54	3 071	.1155	30.62	4 219	.1586	43.32	4 510	.1699	44.96
3 614	6 272	9 886	.3001	291	10 177	.3090	2 306	.0700	23.33	2 015	.0612	19.80	215	.0065	2.17	506	.0154	4.97
5 334	28 184	33 518	.3403	4 191	37 709	.3829	6 838	.0694	20.40	2 647	.0268	7.02	1 814	.0184	5.41	6 005	.0610	15.92
5 334	38 484	43 818	.3910	4 191	48 009	.4283	9 698	.0865	22.15	5 507	.0491	11.47	1 776	.0158	4.05	5 967	.0532	12.43
2 800	12 945	15 745	.5339	1 395	17 140	.5912	1 528	.0518	9.70	133	.0045	.78	2 175	.0737	13.82	3 570	.1210	20.83
9 977	32 068	41 985	.3264	44	41 341	.3214	3 656	.0284	8.71	3 014	.0234	7.29	11 764	.0915	28.02	11 120	.0865	26.90
17 525	18 974	36 499	.2634	135	36 634	.2644	2 186	.0158	5.99	2 051	.0148	5.60	5 996	.0433	16.43	6 131	.0442	16.74
5 965	7 053	13 018	.4084	45	13 063	.4098	319	.0100	2.45	274	.0086	2.10	2 502	.0785	19.22	2 547	.0799	19.50
3 209	5 643	8 852	.4851	2 641	11 493	.6209	1 236	.0677	13.96	3 877	.2125	33.37	3 153	.1728	35.62	5 794	.3175	50.41
3 405	4 777	8 182	.4594	2 641	10 823	.6077	88	.0049	1.08	2 553	.1433	23.59	1 994	.1120	24.37	4 635	.2602	42.83
1 408	1 255	2 663	.4872	660	3 323	.6079	–	–	–	660	.1207	19.86	670	.1226	25.16	1 330	.2433	40.02
1 677	1 671	3 348	.6364	823	4 171	.7928	317	.0603	9.47	1 140	.2167	27.33	944	.1794	26.20	1 767	.3359	42.36
958	747	1 705	.6539	823	2 528	.9697	–	–	–	823	.3158	32.36	353	.1355	20.70	1 176	.4513	46.52
8 896	24 453	33 349	.4196	7 187	40 536	.5101	694	.0082	1.96	7 841	.0987	19.34	8 303	.1120	26.70	16 090	.2025	39.69
2 600	13 604	16 204	.3928	4 029	20 233	.4905	4 964	.1203	30.64	935	.0227	4.62	377	.0091	2.33	4 406	.1068	21.76
442	5 469	5 911	.5099	1 342	7 253	.6256	441	.0380	7.47	1 783	.1538	24.58	1 821	.1571	30.81	3 163	.2728	43.61
19 575	34 488	54 063	.3575	10 425	64 488	.4264	1 393	.0092	2.58	11 816	.0781	18.33	10 673	.0706	19.74	21 098	.1395	32.72
24 000	33 515	57 515	.3881	10 425	67 940	.4585	967	.0067	1.72	11 412	.0770	16.80	10 947	.0739	19.03	21 372	.1442	31.46
5 000	11 913	16 913	.4554	3 475	20 388	.5490	137	.0037	.81	3 812	.0973	17.72	3 093	.0833	18.29	6 568	.1769	32.22
391	278	669	.6533	1 610	2 279	2.2256	99	.0967	14.60	1 704	1.6650	74.99	217	.2119	32.44	1 827	1.7842	80.17
245	245	490	.8719	1 610	2 100	3.7367				1 610	3.2206	76.67	101	.1797	20.61	1 711	3.0445	81.48

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DI
EQUITY NO. 13,829

STATEMENT OF COMMISSIONS, COSTS AND E

UNDER PRESENT COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S C

NOTE:- The 1934 figures cover Jany. Feby. Mar. & Apr. unless otherwise indicated.

FIRM NO.	NAME OF FIRM	YEAR	NUMBER OF HEAD	COMMISSIONS					COSTS						
				ACTUAL		SECRETARY'S ORDER			EXCLUDING APPRAISALS				APPRAISAL ADJUST-MENTS	INCLUDING APPRAISALS	
				TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL	PER HEAD		TOTAL	PER HEAD
101	WM. DANIEL	1932	3 476	2 325	.6689	79.32	1 844	.5305	1 454	984	2 438	.7014	1 046	3 484	1.0023
		1933	3 863	2 826	.7316	79.32	2 242	.5804	2 099	727	2 826	.7313	1 046	3 872	1.0018
		1934	(DESTROYED BY FIRE)												
102	WILL C. WOOD & CO.	1932	10 116	2 674	.2643	84.88	2 270	.2244	1 300	1 286	2 586	.2556	100	2 686	.2655
		1933	(DESTROYED BY FIRE)												
		1934	5 962	1 252	.2100	84.88	1 063	.1783	547	705	1 252	.2199	33	1 285	.2155
103	JOHN A HAVEY CO.	1932	67 290	5 238	.0777	79.32	4 155	.0617	3 474	1 865	5 339	.0792	126	5 465	.0812
		1933	(DECEASED)												
		1934	(DECEASED)												
104	INGWERSEN, MOSIER & INGWERSEN	1932	34 404	18 565	.5396	75.28	13 976	.4062	8 173	7 938	16 111	.4683	6 494	22 605	.6570
		1933	102 789	52 257	.5084	75.28	39 339	.3827	24 999	20 531	45 530	.4429	19 482	65 012	.6325
		1934	34 108	16 552	.4853	75.28	12 460	.3653	8 173	7 132	15 305	.4487	6 494	21 799	.6391
105	BROTT L. S. COM. CO.	1932	(NOT IN BUSINESS)												
		1933	31 720	9 326	.2940	79.32	7 397	.2332	4 117	5 209	9 326	.2940	-	9 326	.2940
		1934	12 976	3 302	.2545	79.32	2 619	.2018	1 543	1 759	3 302	.2545	-	3 302	.2545
106	HALPIN L. S. COM. CO.	1932	(NOT IN BUSINESS)												
		1933	(NOT IN BUSINESS)												
		1934	(INCLUDED IN STOCKMENS LIVESTOCK COMM. CO.)												
107	C. W. HART	1932	(NOT IN BUSINESS)												
		1933	11 117	3 514	.3161	79.32	2 787	.2507	2 108	1 406	3 514	.3161	-	3 514	.3161
		1934	(DESTROYED BY FIRE)												
108	W. O. JENNINGS & CO.	1932	(NOT IN BUSINESS)												
	(JAN. FEB. & MARCH)	1933	18 551	9 330	.5029	78.94	7 365	.3970	4 687	4 643	9 330	.5029	-	9 330	.5029
		1934	8 401	4 552	.5419	78.94	3 593	.4277	2 959	1 593	4 552	.5419	-	4 552	.5419
109	O. E. NIXON & CO.	1932													
		1933		(INCLUDED IN WM. DANIEL)											
		1934													
110	STEPHENSON COM. CO.	1932	(NOT IN BUSINESS)												
		1933	17 113	4 762	.2783	83.07	3 956	.2312	788	3 974	4 762	.2783	-	4 762	.2783
		1934	(DESTROYED BY FIRE)												
1	A. P. SCHMAL	1932	8 287	3 211	.3875	79.32	2 547	.3073	1 311	2 033	3 344	.4035	523	3 867	.4666
		1933	7 652	3 231	.4222	79.32	2 563	.3349	1 615	1 616	3 231	.4221	566	3 797	.4961
		1934	(INCLUDED IN NORTHWESTERN												

FIRM NO.	NAME OF FIRM	YEAR	NUMBER OF HEAD	ACTUAL		SECRETARY'S ORDER			EXCLUDING APPRAISALS				APPRAISAL ADJUST-MENTS	INCLUDING APPRAISALS	
				TOTAL	PER HEAD	% OF ACTUAL	TOTAL	PER HEAD	OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL			TOTAL	PER HEAD
											TOTAL	PER HEAD			
101	WM. DANIEL	1932	3 476	2 325	.6689	79.32	1 844	.5305	1 454	984	2 438	.7014	1 046	3 484	1.0023
		1933	3 863	2 826	.7316	79.32	2 242	.5804	2 099	727	2 826	.7313	1 046	3 872	1.0018
		1934	(DESTROYED BY FIRE)												
102	WILL C. WOOD & CO.	1932	10 116	2 674	.2643	84.88	2 270	.2244	1 300	1 286	2 586	.2556	100	2 686	.2655
		1933	(DESTROYED BY FIRE)												
		1934	5 962	1 252	.2100	84.88	1 063	.1783	547	705	1 252	.2199	33	1 285	.2155
103	JOHN A HAVEY CO.	1932	67 290	5 238	.0777	79.32	4 155	.0617	3 474	1 865	5 339	.0792	126	5 465	.0812
		1933	(DECEASED)												
		1934	(DECEASED)												
104	INGWERSEN, MOSIER & INGWERSEN	1932	34 404	18 565	.5396	75.28	13 976	.4062	8 173	7 938	16 111	.4683	6 494	22 605	.6570
		1933	102 789	52 257	.5084	75.28	39 339	.3827	24 999	20 531	45 530	.4429	19 482	65 012	.6325
		1934	34 108	16 552	.4853	75.28	12 460	.3653	8 173	7 132	15 305	.4487	6 494	21 799	.6391
105	BROTT L. S. COM. CO.	1932	(NOT IN BUSINESS)												
		1933	31 720	9 326	.2940	79.32	7 397	.2332	4 117	5 209	9 326	.2940	-	9 326	.2940
		1934	12 976	3 302	.2545	79.32	2 619	.2018	1 543	1 759	3 302	.2545	-	3 302	.2545
106	HALPIN L. S. COM. CO.	1932	(NOT IN BUSINESS)												
		1933	(NOT IN BUSINESS)												
		1934	(INCLUDED IN STOCKMENS LIVESTOCK COMM. CO.)												
107	C. W. HART	1932	(NOT IN BUSINESS)												
		1933	11 117	3 514	.3161	79.32	2 787	.2507	2 108	1 406	3 514	.3161	-	3 514	.3161
		1934	(DESTROYED BY FIRE)												
108	W. O. JENNINGS & CO. (JAN. FEB. & MARCH)	1932	(NOT IN BUSINESS)												
		1933	18 551	9 330	.5029	78.94	7 365	.3970	4 687	4 643	9 330	.5029	-	9 330	.5029
		1934	8 401	4 552	.5419	78.94	3 593	.4277	2 959	1 593	4 552	.5419	-	4 552	.5419
109	C. E. NIXON & CO.	1932													
		1933	(INCLUDED IN WM. DANIEL)												
		1934													
10	STEPHENSON COM. CO.	1932	(NOT IN BUSINESS)												
		1933	17 113	4 762	.2783	83.07	3 956	.2312	788	3 974	4 762	.2783	-	4 762	.2783
		1934	(DESTROYED BY FIRE)												
11	A. P. SCHMAL	1932	8 287	3 211	.3875	79.32	2 547	.3073	1 311	2 033	3 344	.4035	523	3 867	.4666
		1933	7 652	3 231	.4222	79.32	2 563	.3349	1 615	1 616	3 231	.4221	566	3 797	.4961
		1934	(INCLUDED IN NORTHWESTERN LIVESTOCK COM. CO.)												
12	ROBERT E. JOHNSON	1932	(NOT IN BUSINESS)												
		1933	7 667	1 425	.1859	80.53	1 148	.1497	977	448	1 425	.1859	-	1 425	.1859
		1934	(INCLUDED IN MURRAY & MCDOWELL)												
	ALL FIRMS	1932	8 [illegible] 181	2 670 704	.3211	79.32	2 120 871	.2541	703 220	2 034 [illegible]	2 [illegible] 360	.3154	[illegible]	3181 183	.3818
		1933	8 259 301	2 922 259	.3538	79.32	2 315 007	.2803	772 090	1 887 149	2 659 239	.3220	333 753	2992 992	.3624
		1934	2 403 821	897 628	.3599	79.32	711 170	.2958	221 100	686 250	887 350	.3359	100 460	907 810	.3777

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,829

T OF COMMISSIONS, COSTS AND PROFIT OR LOSS

T COMMISSION RATES, AS COMPARED WITH RATES UNDER SECRETARY'S ORDER DATED MARCH 12, 1934

SCHEDULE NO. 7

COSTS							PROFIT OR LOSS											
EXCLUDING APPRAISALS				APPRAISAL ADJUST-MENTS	INCLUDING APPRAISALS		BASED ON PRESENT COMMS. EXCLUDING APPRAISALS			BASED ON PRESENT COMMS. INCLUDING APPRAISALS			BASED ON SECY'S COMMS. EXCLUDING APPRAISALS			BASED ON SECY'S COMMS. INCLUDING APPRAISALS		
OWNERS' SALARIES	OTHER SALY & EXPS	TOTAL			TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
		TOTAL	PER HEAD															
1 454	984	2 438	.7014	1 046	3 484	1.0023	113	.0325	4.63	1 159	.3334	33.27	594	.1709	24.36	1 640	.4718	47.07
2 099	727	2 826	.7313	1 046	3 872	1.0018	–	–	–	1 046	.2703	26.98	584	.1512	20.67	1 630	.4214	42.07
1 300	1 286	2 586	.2556	100	2 686	.2655	88	.0087	3.40	12	.0012	.45	316	.0312	12.22	416	.0411	15.49
547	705	1 252	.2199	33	1 285	.2155	–	–	–	33	.0055	2.57	189	.0317	15.10	222	.0372	17.28
3 474	1 865	5 339	.0792	126	5 465	.0812	101	.0015	1.89	227	.0035	4.15	1 184	.0176	22.18	1 310	.0195	23.97
8 173	7 938	16 111	.4683	6 494	22 605	.6570	2 454	.0713	15.23	4 040	.1174	17.87	2 135	.0621	13.25	8 629	.2508	38.17
24 999	20 531	45 530	.4429	19 482	65 012	.6325	6 727	.0654	14,77	12 755	.1241	19.62	6 191	.0602	13.60	25 673	.2498	39.49
8 173	7 132	15 305	.4487	6 494	21 799	.6391	1 247	.0366	8.15	5 247	.1538	24:07	2 845	.0834	18.59	9 339	.2738	42.84
4 117	5 209	9 326	.2940	–	9 326	.2940	–	–	–	–	–	–	1 929	.0608	20.68	1 929	.0608	20.68
1 543	1 759	3 302	.2545	–	3 302	.2545	–	–	–	–	–	–	683	.0526	20.68	683	.0526	20.68
2 108	1 406	3 514	.3161	–	3 514	.3161	–	–	–	–	–	–	727	.0654	20.69	727	.0654	20.69
4 687	4 643	9 330	.5029	–	9 330	.5029	–	–	–	–	–	–	1 965	.1059	21.06	1 965	.1059	21.06
2 959	1 593	4 552	.5419	–	4 552	.5419	–	–	–	–	–	–	959	.1142	21.07	959	.1142	21.07
788	3 974	4 762	.2783	–	4 762	.2783	–	–	–	–	–	–	806	.0471	16.93	806	.0471	16.93
1 311	2 033	3 344	.4035	523	3 867	.4666	133	.0160	3.98	656	.0791	16.96	797	.0962	23.83	1 320	.1593	34.13
1 615	1 616	3 231	.4221	566	3 797	.4961	–	–	–	566	.0740	1.49	668	.0873	20.67	1 234	.1613	32.50

WNERS' LARIES	OTHER SALY & EXPS	TOTAL		ADJUST-MENTS	TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
		TOTAL	PER HEAD															
1 454	984	2 438	.7014	1 046	3 484	1.0023	113	.0325	4.63	1 159	.3334	33.27	594	.1709	24.36	1 640	.4718	47.07
2 099	727	2 826	.7313	1 046	3 872	1.0018	–	–	–	1 046	.2703	26.98	584	.1512	20.67	1 630	.4214	42.07
1 300	1 286	2 586	.2556	100	2 686	.2655	88	.0087	3.40	12	.0012	.45	316	.0312	12.22	416	.0411	15.49
547	705	1 252	.2199	33	1 285	.2155	–	–	–	33	.0055	2.57	189	.0317	15.10	222	.0372	17.28
3 474	1 865	5 339	.0792	126	5 465	.0812	101	.0015	1.89	227	.0035	4.15	1 184	.0176	22.18	1 310	.0195	23.97
8 173	7 938	16 111	.4683	6 494	22 605	.6570	2 454	.0713	15.23	4 040	.1174	17.87	2 135	.0621	13.25	8 629	.2508	38.17
24 999	20 531	45 530	.4429	19 482	65 012	.6325	6 727	.0654	14.77	12 755	.1241	19.62	6 191	.0602	13.60	25 673	.2498	39.49
8 173	7 132	15 305	.4487	6 494	21 799	.6391	1 247	.0366	8.15	5 247	.1538	24.07	2 845	.0834	18.59	9.339	.2738	42.84
4 117	5 209	9 326	.2940	–	9 326	.2940	–	–	–	–	–	–	1 929	.0608	20.68	1 929	.0608	20.68
1 543	1 759	3 302	.2545	–	3 302	.2545	–	–	–	–	–	–	683	.0526	20.68	683	.0526	20.68
2 108	1 406	3 514	.3161	–	3 514	.3161	–	–	–	–	–	–	727	.0654	20.69	727	.0654	20.69
4 687	4 643	9 330	.5029	–	9 330	.5029	–	–	–	–	–	–	1 965	.1059	21.06	1 965	.1059	21.06
2 959	1 593	4 552	.5419	–	4 552	.5419	–	–	–	–	–	–	959	.1142	21.07	959	.1142	21.07
788	3 974	4 762	.2783	–	4 762	.2783	–	–	–	–	–	–	806	.0471	16.93	806	.0471	16.93
1 311	2 033	3 344	.4035	523	3 867	.4666	133	.0160	3.98	656	.0791	16.96	797	.0962	23.83	1 320	.1593	34.13
1 615	1 616	3 231	.4221	566	3 797	.4961	–	–	–	566	.0740	1.49	668	.0873	20.67	1 234	.1613	32.50
977	448	1 425	.1859	–	1 425	.1859	–	–	–	–	–	–	277	.0361	19.44	277	.0361	19.44
[illegible]	2 034 [illegible]	2 [illegible] 300	.3154	[illegible]	3181 133	.3348	[illegible]	.0057	1.82	302 435	.0337	9.51	54[illegible] 509	.0609	19.33	900 318	.1004	28.30
72 090	1 087 149	2 659 239	.3220	333 753	2992 992	.3624	263 020	.0318	9.89	70 731	.0086	2.36	344 231	.0417	12.94	677 983	.0821	22.65
[illegible] 100	586 250	807 350	.3359	100 460	907 810	.3777	90 278	.0375	11.18	10 183	.0042	1.12	96 180	.0400	11.91	196 641	.0818	21.66

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,829

Petitioners' Exhibit No. 3
Witness, Earle D. Mudd.

SECRETARY'S REASONABLE COST
Cattle & calves - $ .4927
Hogs..... - .1323
Sheep..... - .0485

STATEMENT SHOWING THE APPLICATION OF THE SECRETARY'S REASONABLE COST PER HEAD
(As shown on page 110 of Secretary's order dated January 8, 1934)
TO THE VOLUME OF BUSINESS HANDLED DURING THE YEAR 1932

SCHEDULE NO. 8

FIRM NO.	NAME OF FIRM	CATTLE & CALVES		HOGS		SHEEP		ALL SPECIES		
		HEAD	SECY. COST	HEAD	SECY. COST	HEAD	SECY. COST	HEAD	SECY. COST	SECY. COST PER HEAD
1	STRADER BROTHERS	1 095	471	3 805	503	372	18	5 272	992	.1882
2	ADAMS, CORRICK & HATCH	15 626	6 714	51 946	6 872	4 637	225	72 209	13 811	.1913
3	ADLER SONS & CO.	4 198	1 804	7 185	951	321	16	11 704	2 771	.2368
4	ALEXANDER CONOVER & CO.	146 965	63 151	104 236	13 790	132 822	6 442	384 023	83 383	.2171
5	LOUIS ARMBRECHT COM. CO.	2 007	862	1 491	197	468	23	3 966	1 082	.2728
6	BAKER, HEYNE & CO.	29 701	12 763	76 895	10 173	9 431	457	116 027	23 393	.2016
7	SULLIVAN COM. CO.	177	76	402	53	119	6	698	135	.1934
8	BARTON, LOONEY & CO.	14 096	6 057	10 288	1 361	1 252	61	25 636	7 479	.2917
9	BENTON & CO.	3 466	1 489	17 359	2 297	1 149	56	21 974	3 842	.1748
10	BOWLES L. S. COM. CO.	59 159	25 421	66 307	8 772	148 745	7 214	274 211	41 407	.1510
11	SWANSON, GILMORE & CASTENHOLZ	62 783	26 978	105 011	13 893	6 931	336	174 725	41 207	.2358
12	ABE BURNETT & CO.	7 814	3 358	8 434	1 116	3 409	165	19 657	4 639	.2360
13	BYERS BROTHERS & CO.	3 608	1 550	11 296	1 494	1 441	70	16 345	3 114	.1905
14	CALLAHAN L. S. COM. CO.	121	52	14 152	1 872	13	1	14 286	1 925	.1347
15	HARRY L. CARPENTER	855	367	13 784	1 824	369	18	15 008	2 209	.1472
16	CENTRAL L. S. COM. CO.	28 931	12 432	51 783	6 851	4 605	223	85 319	19 506	.2286
17	CLARK BOWLES & CO.	412	177	2 699	357	90	4	3 201	538	.1681
18	JOHN CLAY & CO.	149 778	64 360	116 479	15 410	515 982	25 025	782 239	104 795	.1340
19	COCHRAN, HENNEBERRY & WALLACE	32 630	14 021	93 622	12 386	9 233	448	135 485	26 855	.1982
20	CONKLIN BROS. COM. CO.	47 832	20 553	93 825	12 413	6 367	309	148 024	33 275	.2248
21	H. D. COPELAND & CO.	47 508	20 414	100 545	13 302	29 199	1 416	177 252	35 132	.1982
22	SWINEY BROTHERS	19 987	8 588	118 620	15 694	7 922	384	146 529	24 666	.1683
23	DOLAN, LUDEMAN & CO.	42 362	18 203	77 905	10 307	2 525	122	122 792	28 632	.2332
24	DROVERS COM. CO.	48 754	20 950	93 757	7 112	2 676	130	105 187	28 192	.2680
26	H. L. DUNNING & CO.	26 031	11 186	40 243	5 324	2 220	108	68 494	16 618	.2426
27	H. O. THOMPSON & CO.	6 286	2 701	21 610	2 859	1 021	50	28 917	5 610	.1940
28	ETTLINGER L. S. COM. CO.	13 785	5 923	31 688	4 192	3 493	169	48 966	10 284	.2100
29	EVANS, SNIDER, BUEL COM. CO.	14 308	6 148	49 458	6 543	62 402	3 027	126 168	15 718	.1246
30	FILLER, WILSON & MCCLELLAND	47 364	20 352	24 616	3 257	4 715	229	76 695	23 838	.3108
31	FRED FREEMAN	1 033	444	-	-	-	-	1 033	444	.4298
32	I. O. FRY	1 792	770	1 809	239	860	42	4 461	1 051	.2356
33	WM. GENTLEMAN & SONS	60 917	26 176	74 722	9 886	11 959	580	147 598	36 642	.2483
34	GILLOGLY & CO.	32 711	14 056	116 999	15 480	6 444	313	156 154	29 849	.1912
35	GREENWOOD COM. CO.	4 533	1 948	25 879	3 424	1 255	61	31 667	5 433	.1716
36	HAIME & RENEKER	11 002	4 728	4 724	625	4 257	207	19 983	5 560	.2782
37	CHAS. E. HARDING CO.	19 767	8 494	65 748	8 698	2 521	122	88 036	17 314	.1967
38	UNITED COM. CO.	34 417	14 789	48 126	6 367	6 749	327	89 292	21 483	.2406
39	GEO. W. VON BERNER	1 449	623	18 252	2 415	145	7	19 846	3 045	.1534
40	HEFNER COM. CO. INC.	26 989	11 597	50 850	6 727	4 634	225	82 473	18 549	.2249
41	GEO. F. HOGAN	287	123	905	120	-	-	1 192	243	.2039
42	HOLLOWAY & OGREN	14 365	6 173	74 736	9 888	4 065	197	93 166	16 258	.1745
43	IOWA LIVE STOCK COM. CO.	39 217	16 852	47 412	6 273	1 818	88	88 447	23 213	.2625
4	DAVID C. WAGNER	1 069	459	16 616	2 198	1 323	64	19 008	2 721	.1432
45	WALTERS & DUNBAR	86 428	37 138	117 651	15 566	32 843	1 593	236 922	54 297	.2292
46	WALTER BROTHERS	3 130	1 345	2 806	371	827	40	6 763	1 756	.2596
47	KNETTLE BROTHERS	1 271	546	13 693	1 812	-	-	14 964	2 358	.1576
48	KUENSTER L. S. COM. CO.	59 659	25 635	153 661	20 329	12 275	595	225 595	46 559	.2064

46	WALTER BROTHERS	5 130	1 342	2 806	371	2 822	40	8 798	1 450	.1650
47	KNETTLE BROTHERS	1 271	546	13 693	1 812	–	–	14 964	2 358	.1576
48	KUENSTER L. S. COM. CO.	59 659	25 635	153 661	20 329	12 275	595	225 595	46 559	.2064
49	JOHN A. WATERS L. S. COM. CO.	10	4	7 584	1 003	59	3	7 653	1 010	.1320
50	LAMBRIGHT, KEYS & HUSTON	7 683	3 301	14 096	1 865	939	46	22 720	5 212	.2294
51	LAWLER BROTHERS & CO.	158 140	67 953	88 192	11 668	34 211	1 659	280 543	81 280	.2897
52	L. B. WERDEN	4 224	1 815	1 819	241	151	7	6 194	2 063	.3331
54	W. W. WILSON & CO.	32 619	14 016	63 713	8 429	5 073	246	101 405	22 691	.2238
55	MARTIN BROS. & CO.	26 343	11 320	57 814	7 649	12 827	622	96 984	19 591	.2020
56	MCCAUSLAND, HOAG & VAUGHAN	62 105	26 687	19 909	2 634	9 554	463	91 568	29 784	.3253
57	MERRION & WILKINS	–	–	–	–	609 912	29 581	609 912	29 581	.0485
58	MILLER, WHITE & WOODS	48 101	20 669	64 913	8 588	13 161	638	126 175	29 895	.2369
59	MINTEER, HUBBIRD & CO.	18 933	8 136	8 395	1 111	1 037	50	28 365	9 297	.3278
60	CHAS. H. MOBERLY	1 344	578	1 499	198	2	–	2 845	776	.2728
61	MULLEN COM. CO.	18 806	8 081	38 784	5 131	2 082	101	59 672	13 313	.2231
62	MURRAY & MCDOWELL	21 349	9 174	53 334	7 056	26 891	1 304	101 574	17 534	.1726
63	MUTUAL LIVESTOCK COM. CO.	36 768	15 799	80 027	10 588	6 249	303	123 044	26 690	.2169
64	NALLEY COM. CO.	6 888	2 960	14 820	1 961	1 109	54	22 817	4 975	.2180
65	JAS. F. NASH	1 342	577	8 751	1 158	587	28	10 680	1 763	.1651
66	NATIONAL LIVESTOCK COM. CO.	141 218	60 681	129 004	17 067	105 764	5 130	375 986	82 678	.2204
67	E. F. WOELFER & CO.	5 524	2 374	3 742	495	–	–	9 266	2 869	.3096
68	HAENER, NIXON COM. CO.	2 694	1 158	10 812	1 430	273	13	13 779	2 601	.1888
69	NORTHWESTERN L. S. COM. CO.	20 655	8 875	51 034	6 752	5 726	278	77 415	15 905	.2055
70	SILAS PALMER & SONS	51 037	21 931	45 980	6 083	3 828	186	100 845	28 200	.2796
71	WOOD BROTHERS	66 384	28 525	71 538	9 464	142 503	6 911	280 425	44 900	.1601
72	JOHN PATTERSON & SON	4 442	1 909	963	127	45	2	5 450	2 038	.3739
73	PETERSON, TURNBULL & CO.	25 449	10 935	48 534	6 421	6 301	306	80 284	17 662	.2200
74	PRITCHARD COM. CO.	4 862	2 089	6 234	825	89	4	11 185	2 918	.2609
75	QUINN COM. CO.	38 604	16 588	16 036	2 122	2 930	142	57 570	18 852	.3275
76	GLENN K. WOOD & CO.	658	283	7 306	967	209	10	8 173	1 260	.1542
77	RICE BROTHERS	74 220	31 892	74 638	9 875	16 490	800	165 348	42 567	.2574
78	ALEX RINDERLE & CO.	13 514	5 807	55 012	7 278	16 362	794	84 888	13 879	.1635
79	ROACH L. S. COM. CO.	15 231	6 545	5 118	677	970	47	21 319	7 269	.3410
80	CHAS. O. ROBINSON & CO.	36 342	15 616	12 884	1 705	14 021	680	63 247	18 001	.2846
81	ROSENBAUM BROTHERS & CO.	49 487	21 265	44 727	5 917	59 563	2 889	153 777	30 071	.1955
82	SARSFIELD & SCHROCK COM. CO.	5 988	2 573	78 040	10 325	852	41	84 880	12 939	.1524
83	YANCEY, SINNARD & ROBERTS	32 162	13 820	49 372	6 532	19 063	925	100 597	21 277	.2115
84	GEORGE M. BROWNSON & CO.	2 066	886	17 200	2 276	348	17	19 614	3 181	.1622
85	SCHROEDER L. S. COM. CO.	13 132	5 643	43 221	5 718	1 495	73	57 848	11 434	.1977
86	SHELDON COM. CO.	2 330	1 001	10 591	1 401	358	17	13 279	2 419	.1822
87	SHERWOOD & SON	9 396	4 037	30 059	3 977	2 295	111	41 750	8 125	.1946
88	W. E. YOUNG & CO.	581	250	1 266	167	51	2	1 898	419	.2208
89	SINCLAIR COM. CO.	495	213	253	33	8	–	756	246	.3254
90	W. R. SMITH & SONS	15	6	–	–	273 314	13 256	273 329	13 262	.2485
91	L. SPENCER & CO.	1 510	649	23 168	3 065	1 923	93	26 601	3 807	.1431
92	STAFFORD BROTHERS	33 685	14 474	56 246	7 441	8 560	415	90 491	22 330	.2267
93	STANDARD L. S. COM. CO.	23 089	9 921	85 572	11 321	19 958	968	128 619	22 210	.1727
94	STARRETT L. S. COM. CO.	10 146	4 360	7 157	947	944	46	18 247	5 353	.2934
95	STEWARD & MCILLHANY	3 094	1 329	2 167	287	–	–	5 261	1 616	.3072
96	ST. JOHN, COMPTON, DUNBAR CO.	27 143	11 663	44 653	5 908	7 676	372	79 472	17 943	.2258
97	STOCKMENS L. S. COM. CO.	39 467	16 959	95 077	12 579	16 681	809	151 225	30 347	.2007
98	C. H. ACKER & CO.	519	223	505	67	–	–	1 024	290	.2232
101	WM. DANIEL	2 748	1 181	728	96	–	–	3 476	1 277	.3674
102	WILL C. WOOD	565	243	9 299	1 230	252	12	10 116	1 485	.1468
103	JOHN A. HAVEY	24	10	65	9	67 201	3 259	67 290	3 278	.0487
104	INGWERSEN, MOSIER & INGWERSEN	18 357	7 888	14 756	1 952	1 291	63	34 404	9 903	.2878
111	A. P. SCHMAL	3 433	1 475	2 898	383	1 956	95	8 287	1 953	.2357
	ALL FIRMS	2 502 596	1 075 366	3 883 537	513 792	2 579 048	125 084	8 965 181	1 714 242	.1912

SECRETARY'S REASONABLE COST
Cattle & Calves - $ .4297
Hogs..... - .1323
Sheep..... - .0485

STATEMENT SHOWING THE APPLICATION OF THE SECRETARY'S REASONABLE COST PER HEAD
(As shown on page 110 of Secretary's order dated January 8, 1934)
TO THE VOLUME OF BUSINESS HANDLED DURING THE YEAR 1933

SCHEDULE NO. 8

FIRM NO.	NAME OF FIRM	CATTLE & CALVES		HOGS		SHEEP		ALL SPECIES		
		HEAD	SECY. COST	HEAD	SECY. COST	HEAD	SECY. COST	HEAD	SECY. COST	SECY. COST PER HEAD
1	STRADER BROTHERS	–	–	–	–	–	–	–	–	–
2	ADAMS, CORRICK & HATCH	14 005	6 018	50 031	6 619	4 870	236	68 906	12 873	.1868
3	ADLER SONS & CO.	4 955	2 129	8 535	1 129	736	36	14 226	3 294	.2315
4	ALEXANDER CONOVER & CO.	123 636	53 126	82 280	10 886	78 187	3 792	284 103	67 804	.2387
5	LOUIS ARMBRECHT COM. CO.	1 169	502	1 501	199	415	20	3 085	721	.2337
6	BAKER, HEYNE & CO.	36 160	15 538	66 728	8 828	9 876	479	112 764	24 845	.2203
7	SULLIVAN COM. CO.	–	–	–	–	–	–	–	–	–
8	BARTON, LOONEY & CO.	13 428	5 770	8 303	1 098	1 252	61	22 983	6 929	.3015
9	BENTON & CO.	4 951	2 127	21 864	2 893	1 800	87	28 615	5 107	.1785
10	BOWLES L. S. COM. CO.	–	–	–	–	–	–	–	–	–
11	SWANSON, GILMORE & CASTENHOLZ	70 383	30 244	105 757	13 991	7 552	366	183 692	44 601	.2428
12	ABE BURNETT & CO.	–	–	–	–	–	–	–	–	–
13	BYERS BROTHERS & CO.	–	–	–	–	–	–	–	–	–
14	CALLAHAN L. S. COM. CO.	73	31	6 990	925	27	1	7 090	957	.1350
15	HARRY L. CARPENTER	820	352	17 716	2 344	793	38	19 329	2 734	.1414
16	CENTRAL L. S. COM. CO.	19 075	8 197	34 230	4 529	2 786	135	56 091	12 861	.2293
17	CLARK BOWLES & CO.	701	301	3 093	409	15	1	3 809	711	.0816
18	JOHN CLAY & CO.	149 039	64 042	118 441	15 670	606 078	29 394	873 558	109 106	.1249
19	COCHRAN, HENNEBERRY & WALLACE	32 002	13 751	110 014	14 555	8 185	397	150 201	28 703	.1911
20	CONKLIN BROS. COM. CO.	58 073	24 954	93 029	12 308	3 404	165	154 506	37 427	.2422
21	H. D. COPELAND & CO.	51 226	22 012	88 013	11 644	25 570	1 240	164 809	34 896	.2117
22	SWINEY BROTHERS	17 759	7 631	112 186	14 842	4 066	197	134 011	22 670	.1692
23	DOLAN, LUDEMAN & CO.	46 604	20 026	67 540	8 936	4 948	240	119 092	29 202	.2452
24	DROVERS COM. CO.	51 627	22 184	56 279	7 710	6 759	328	116 665	30 222	.2590
26	H. L. DUNNING & CO.	21 335	9 168	34 259	4 532	1 622	79	57 216	13 779	.2408
27	H. O. THOMPSON & CO.	7 037	3 024	16 385	2 168	996	48	24 418	5 240	.2146
28	ETTLINGER L. S. COM. CO.	8 136	3 496	20 815	2 754	792	38	29 743	6 288	.2114
29	EVANS, SNIDER, BUEL COM. CO.	14 122	6 068	59 223	7 835	38 149	1 850	111 494	15 753	.1413
30	FILLER, WILSON & MCCLELLAND	43 079	18 511	23 407	3 097	4 049	196	70 535	21 804	.3091
31	FRED FREEMAN	1 825	784	–	–	–	–	1 825	784	.4296
32	I. O. FRY	1 425	612	1 204	159	178	9	2 807	780	.2779
33	WM. GENTLEMAN & SONS	63 045	27 091	80 122	10 600	6 620	321	149 787	38 012	.2538
34	GILLORLY & CO.	34 930	15 009	128 162	16 955	7 294	354	170 386	32 318	.1897
35	GREENWOOD COM. CO.	4 636	1 992	29 103	3 850	1 089	53	34 828	5 895	.1693
36	HAIME & RENEKER	10 153	4 363	11 563	1 530	2 448	119	24 164	6 012	.2488
37	CHAS. E. HARDING CO.	20 294	8 720	63 466	8 397	2 827	137	86 587	17 254	.1993
38	UNITED COM. CO.	37 309	16 032	78 967	10 447	4 078	198	120 354	26 677	.2217
39	GEO. W. VON BERNER	474	204	11 473	1 518	90	4	12 037	1 726	.1434
40	HEFNER COM. CO. INC.	28 713	12 338	86 306	11 418	4 505	218	119 524	23 974	.2006
41	GEO. F. HOGAN	–	–	–	–	–	–	–	–	–
42	HOLLOWAY & OGREN	13 446	5 778	87 987	11 641	5 129	249	106 562	17 668	.1658
43	IOWA LIVESTOCK COM. CO.	39 369	16 917	55 178	7 300	3 121	151	97 668	24 368	.2495
44	DAVID C. WAGNER	1 170	503	15 093	1 997	292	14	16 555	2 514	.1519
45	WALTERS & DUNBAR	84 345	36 243	104 132	13 776	30 586	1 483	219 063	51 502	.2351
46	WALTER BROTHERS	3 110	1 336	6 369	843	257	12	9 736	2 191	.2250
47	KNETTLE BROTHERS	1 229	528	19 183	2 538	12	1	20 424	3 067	.1502

47	KNETTLE BROTHERS	1 229	528	19 183	2 538	12	1	20 424	3 067	.1502	
48	KUENSTER L. S. COM. CO.	75 623	32 495	143 366	18 967	12 998	630	231 987	52 092	.2245	
49	JOHN A. WATERS L. S. COM. CO.	–	–	–	–	–	–	–	–	–	
50	LAMBRIGHT, KEYS & HUSTON	2 149	923	12 959	1 714	815	40	15 923	2 677	.1681	
51	LAWLER BROTHERS & CO.	162 043	69 630	48 351	6 397	28 852	1 399	239 246	77 426	.3236	
52	L. B. WERDEN	2 488	1 069	2 930	388	34	2	5 452	1 459	.2676	
54	W. W. WILSON & CO.	29 487	12 671	69 803	9 235	4 363	212	103 653	22 118	.2134	
55	MARTIN BROS. & CO.	25 084	10 779	61 687	8 161	7 570	367	94 341	19 307	.2047	
56	MCCAUSLAND, HOAG & VAUGHAN	57 629	24 763	24 415	3 230	15 650	759	97 694	28 752	.2943	
57	MERRION & WILKINS	–	–	–	–	518 290	25 137	518 290	25 137	.0485	
58	MILLER, WHITE & WOODS	46 568	20 010	77 163	10 209	9 662	469	133 393	30 688	.2301	
59	MINTEER, HUBBIRD & CO.	13 105	5 631	7 255	960	327	16	20 687	6 607	.3194	
60	CHAS. H. MOBERLY	1 515	651	1 937	256	135	7	3 587	914	.2548	
61	MULLEN COM. CO.	11 732	5 041	37 135	4 913	1 335	65	50 202	10 019	.1996	
62	MURRAY & MCDOWELL	15 968	6 861	39 151	5 180	2 186	106	57 305	12 147	.2120	
63	MUTUAL LIVESTOCK COM. CO.	31 810	13 669	88 988	11 773	5 713	277	126 511	25 719	.2033	
64	NALLEY COM. CO.	5 540	2 381	12 958	1 714	309	15	18 807	4 110	.2185	
65	JAS. F. NASH	–	–	–	–	–	–	–	–	–	
66	NATIONAL LIVESTOCK COM. CO.	127 336	54 716	133 590	17 674	95 924	4 652	356 850	77 042	.2159	
67	E. F. WOELFER & CO.	3 743	1 608	2 180	288	–	–	5 923	1 896	.3201	
68	HAFNER, NIXON COM. CO.	–	–	–	–	–	–	–	–	–	
69	NORTHWESTERN L. S. COM. CO.	28 734	12 347	50 355	6 662	8 923	433	88 012	19 442	.2209	
70	SILAS PALMER & SONS	46 433	19 952	44 040	5 826	3 909	190	94 382	25 968	.2751	
71	WOOD BROTHERS	58 723	25 233	57 222	7 570	110 654	5 367	226 599	38 170	.1684	
72	JOHN PATTERSON & SON	846	364	1 133	150	17	1	1 996	515	.2580	
73	PETERSON, TURNBULL & CO.	26 514	11 393	58 049	7 680	5 289	257	89 852	19 330	.2151	
74	PRITCHARD COM. CO.	–	–	–	–	–	–	–	–	–	
75	QUINN COM. CO.	26 581	11 422	10 969	1 451	3 018	146	40 568	13 019	.3209	
76	GLEN K. WOOD & CO.	462	199	5 767	763	284	14	6 513	976	.1499	
77	RICE BROTHERS	70 839	30 440	104 547	13 832	14 224	690	189 610	44 962	.2371	
78	ALEX RINDERLE & CO.	13 892	5 969	61 279	8 107	11 038	535	86 209	14 611	.1695	
79	ROACH L. S. COM. CO.	14 401	6 188	3 594	475	84	4	18 079	6 667	.3688	
80	CHAS. O. ROBINSON & CO.	24 731	10 627	6 439	852	5 299	257	36 469	11 736	.3218	
81	ROSENBAUM BROTHERS & CO.	37 547	16 134	32 563	4 308	42 180	2 046	112 290	22 488	.2003	
82	SARSFIELD & SCHROCK COM. CO.	4 888	2 100	35 019	4 633	1 765	86	41 672	6 819	.1636	
83	YANCEY, SINNARD & ROBERTS	29 301	12 591	56 952	7 535	5 489	266	91 742	20 392	.2223	
84	GEORGE M. BROWNSON & CO.	2 109	906	22 809	3 018	673	33	25 591	3 957	.1546	
85	SCHROEDER L. S. COM. CO.	12 148	5 220	61 879	8 187	1 636	79	75 663	13 486	.1782	
86	SHELDON COM. CO.	1 728	743	6 633	878	212	10	8 573	1 631	.1902	
87	SHERWOOD & SON	10 547	4 532	38 761	5 128	2 755	134	52 063	9 794	.1881	
88	W. E. YOUNG & CO.	444	191	920	122	43	2	1 407	315	.2239	
89	SINCLAIR COM. CO.	–	–	–	–	–	–	–	–	–	
90	W. R. SMITH & SONS	–	–	–	–	194 451	9 431	194 451	9 431	.0485	
91	L. SPENCER & CO.	1 903	818	28 921	3 826	2 116	103	32 940	4 747	.1441	
92	STAFFORD BROTHERS	30 597	13 148	73 746	9 757	7 737	375	112 080	23 280	.2077	
93	STANDARD L. S. COM. CO.	21 949	9 431	97 247	12 866	19 364	939	138 560	23 236	.1677	
94	STARRETT L. S. COM. CO.	7 874	3 383	9 713	1 385	223	11	17 810	4 679	.2627	
95	STEWARD & MCILLHANY	1 523	654	913	121	170	8	2 606	783	.3005	
96	ST. JOHN, COMPTON, DUNBAR CO.	18 222	7 830	21 491	2 843	1 538	75	41 251	10 748	.2606	
97	STOCKMENS L. S. COM. CO.	45 598	19 593	91 550	12 112	11 032	535	148 180	32 240	.2176	
98	C. H. ACKER & CO.	267	115	295	39	–	–	562	154	.2740	
101	WM. DANIEL	3 598	1 546	265	35	–	–	3 863	1 581	.4093	
102	WILL C. WOOD	–	–	–	–	–	–	–	–	–	
103	JOHN HAVEY	–	–	–	–	–	–	–	–	–	
104	INGWERSEN, MOSIER & INGWERSEN	46 870	20 140	53 036	7 017	2 883	140	102 789	27 297	.2656	
105	BROTT L. S. COM. CO.	2 167	931	29 252	3 870	301	15	31 720	4 816	.1518	
107	C. W. HART	914	393	9 704	1 284	499	24	11 117	1 701	.1530	
108	W. O. JENNINGS & CO.	9 043	4 101	8 465	1 120	543	26	18 551	5 247	.2828	
110	STEPHENSON COM. CO.	1 494	642	14 839	1 963	780	38	17 113	2 643	.1544	
111	A. P. SCHMAL	3 627	1 559	1 994	264	2 031	99	7 652	1 922	.2512	
112	ROBERT E. JOHNSON	944	406	6 201	820	522	25	7 667	1 251	.1632	
	ALL FIRMS	[illegible]	[illegible]	3 657 357	[illegible]	2 047 298	99 294	8 259 301	1 621 413	.1963	

SECRETARY'S REASONABLE COST
Cattle & calves - $ .4927
Hogs..... - .1323
Sheep..... - .0485

STATEMENT SHOWING THE APPLICATION OF THE SECRETARY'S REASONABLE COST PER HEAD
(As shown on page 110 of Secretary's order dated January 8, 1934)
TO THE VOLUME OF BUSINESS HANDLED DURING THE FIRST FOUR MONTHS OF 1934

SCHEDULE NO, 8

FIRM NO.	NAME OF FIRM	CATTLE & CALVES		HOGS		SHEEP		ALL SPECIES		
		HEAD	SECY. COST	HEAD	SECY. COST	HEAD	SECY. COST	HEAD	SECY. COST	SECY. COST PER HEAD
2	ADAMS, CORRICK & HATCH	4 914	2 112	14 724	1 948	1 260	61	20 898	4 121	.1972
3	ADLER SONS & CO.	–	–	–	–	–	–	–	–	–
4	ALEXANDER CONOVER & CO.	44 393	19 076	27 500	3 638	79 603	3 861	151 496	26 575	.1754
5	LOUIS ARMBRECHT COM. CO.	407	175	705	93	–	–	1 112	268	.2410
6	BAKER, HEYNE & CO.	6 953	2 988	22 884	3 028	300	15	30 137	6 031	.2001
8	BARTON, LOONEY & CO.	5 339	2 294	3 032	401	89	4	8 460	2 699	.3190
9	BENTON & CO.	3 641	1 565	16 169	2 139	169	8	19 979	3 712	.1858
11	SWANSON, GILMORE & CASTENHOLZ	19 364	8 321	32 579	4 310	1 578	77	53 521	12 708	.2374
12	ABE BURNETT & CO.	2 228	957	3 141	416	1 297	63	6 666	1 436	.2154
14	CALLAHAN L. S. COM. CO.	–	–	2 286	302	5	–	2 291	302	.1318
15	HARRY L. CARPENTER	288	124	6 216	822	279	14	6 783	960	.1415
16	CENTRAL L. S. COM. CO.	6 510	2 797	9 186	1 215	400	19	16 096	4 031	.2504
18	JOHN CLAY & CO.	49 281	21 477	26 968	3 568	205 225	9 953	282 174	34 998	.1240
19	COCHRAN, HENNEBERRY & WALLACE	10 817	4 648	28 073	3 714	944	46	39 834	8 408	.2111
20	CONKLIN BROS. COM. CO.	16 309	7 008	32 451	4 293	530	26	49 290	11 327	.2298
22	SWINEY BROTHERS	6 041	2 596	36 643	5 113	488	24	45 172	7 733	.1712
23	DOLAN, LUDEMAN & CO.	–	–	–	–	–	–	–	–	–
24	DROVERS COM. CO.	27 991	12 028	20 012	2 648	896	43	48 899	14 719	.3010
26	H. L. DUNNING & CO.	5 434	2 335	7 944	1 051	162	8	13 540	3 394	.2507
27	H. O. THOMPSON & CO.	1 484	638	4 343	575	34	2	5 861	1 215	.2073
28	ETTLINGER L. S. COM. CO.	1 925	827	7 100	939	131	6	9 156	1 772	.1935
29	EVANS, SNIDER, BUEL COM. CO.	5 252	2 257	17 207	2 277	3 420	166	25 879	4 700	.1816
32	I. O. FRY	486	209	411	54	61	3	958	266	.2777
33	J.H. GENTLEMAN & SONS	20 435	8 781	22 846	3 023	322	16	43 603	11 820	.2711
34	GILLOGLY & CO.	12 899	5 543	34 247	4 531	317	15	47 463	10 089	.2126
35	GREENWOOD COM. CO.	1 574	676	11 695	1 547	37	2	13 306	2 225	.1672
38	UNITED COM. CO.	11 257	4 837	23 826	3 152	1 231	60	36 314	8 049	.2216
40	HEFNER COM. CO. INC.	12 636	5 430	27 920	3 694	634	31	41 190	9 155	.2223
43	IOWA LIVESTOCK COM. CO.	17 262	7 416	24 195	3 200	1 366	66	42 823	10 682	.2495
44	DAVID C. WAGNER	130	56	2 717	369	9	–	2 856	416	.1457
45	WALTERS & DUNBAR	23 920	10 278	31 190	4 127	4 177	203	59 287	14 608	.2464
46	WALTER BROTHERS	1 153	495	928	123	253	12	2 334	630	.2699
48	KUENSTER L. S. COM. CO.	34 559	14 850	51 346	6 793	1 582	77	87 487	21 720	.2483
50	LAMBRIGHT, KEYS & HUSTON	918	394	3 991	528	6	–	4 915	922	.1876
51	LAWLER BROTHERS & CO.	50 007	21 488	14 915	1 973	3 059	148	67 981	23 609	.3473
52	L. B. WERDEN	908	390	978	129	–	–	1 886	519	.2752
54	W. W. WILSON & CO.	11 185	4 806	23 025	3 047	1 034	50	35 244	7 903	.2242
55	MARTIN BROS. & CO.	2 524	1 085	5 667	750	42	2	8 233	1 837	.2231
56	MCCAUSLAND, HOAG & VAUGHAN	23 365	10 040	5 938	786	4 321	210	33 624	11 036	.3282
57	MERRION & WILKINS	–	–	–	–	120 576	5 848	120 576	5 848	.0485
58	MILLER, WHITE & WOODS	17 507	7 523	25 786	3 411	2 685	130	45 978	11 064	.2406
59	MINTEER, HUBBIRD & CO.	5 261	2 261	2 913	385	131	6	8 305	2 652	.3193
60	CHAS. H. MOBERLY	302	130	322	43	–	–	624	173	.2772
61	MULLEN COM. CO.	3 178	1 366	11 438	1 513	38	2	14 654	2 881	.1966
62	MURRY & MCDOWELL	3 878	1 666	11 653	1 542	448	22	15 979	3 230	.2021
63	MUTUAL LIVESTOCK COM. CO.	6 078	2 612	16 556	2 190	988	48	23 622	4 850	.2053
		1 640	705	3 767	498	21	1	5 428	1 204	.2219

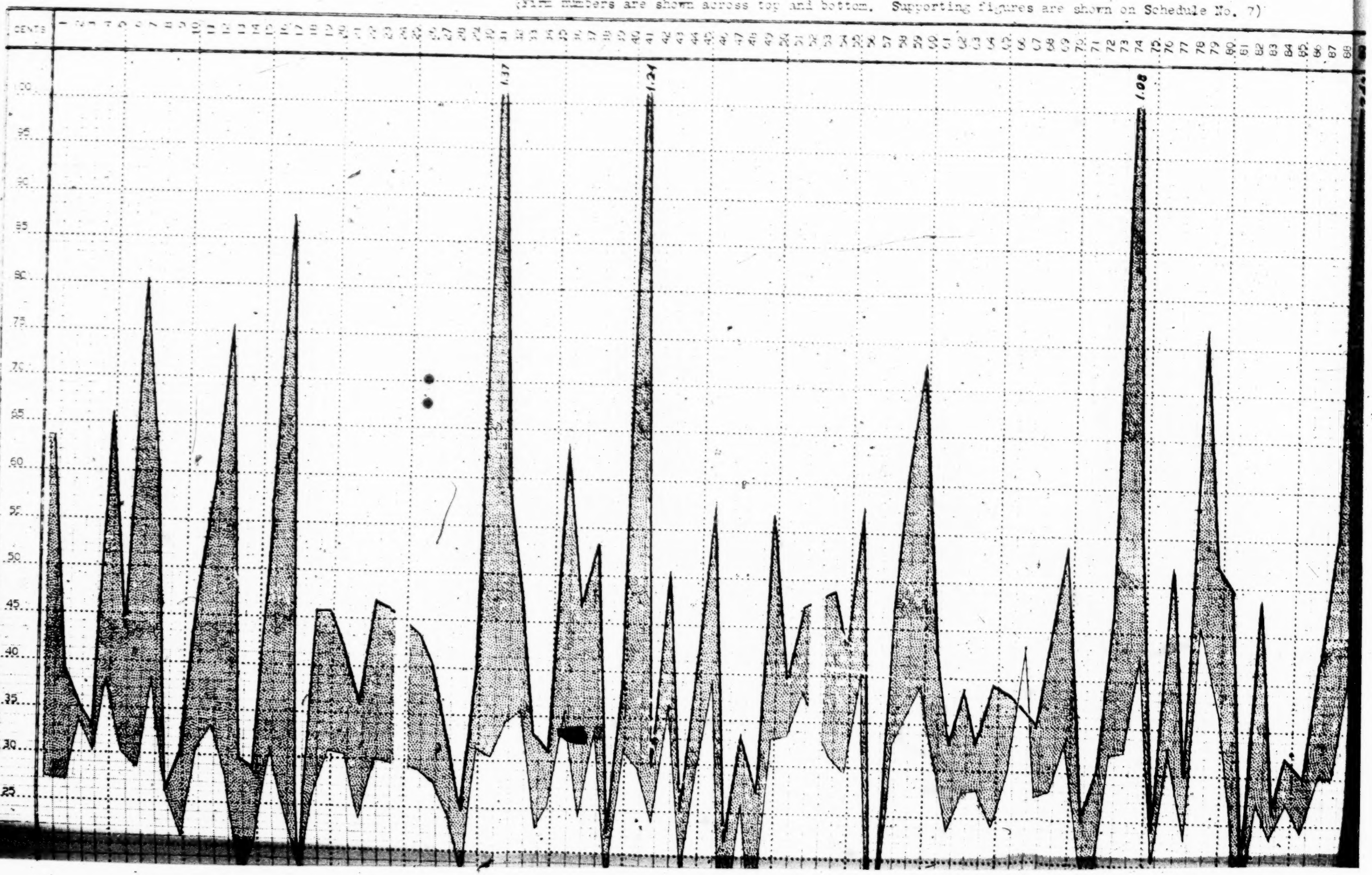
33	WM. GENTLEMAN & SONS	20 435	8 781	22 846	3 023	1 322	16	43 603	11 804	.2711	
34	GILLOGLY & CO.	12 899	5 543	34 247	4 531	317	15	47 463	10 089	.2126	
35	GREENWOOD COM. CO.	1 574	676	11 695	1 547	37	2	13 306	2 225	.1672	
38	UNITED COM. CO.	11 257	4 837	23 826	3 152	1 231	60	36 314	8 049	.2216	
40	HEFNER COM. CO. INC.	12 636	5 430	27 920	3 694	634	31	41 190	9 155	.2223	
43	IOWA LIVESTOCK COM. CO.	17 262	7 416	24 195	3 200	1 366	66	42 823	10 682	.2495	
44	DAVID C. WAGNER	130	56	2 717	369	9	-	2 856	416	.1457	
45	WALTERS & DUNBAR	23 920	10 278	31 190	4 127	4 177	203	59 287	14 608	.2464	
46	WALTER BROTHERS	1 153	495	928	123	253	12	2 334	630	.2699	
48	KUENSTER L. S. COM. CO.	34 559	14 850	51 346	6 793	1 582	77	87 487	21 720	.2483	
50	LAMBRIGHT, KEYS & HUSTON	918	394	3 991	528	6	-	4 915	922	.1876	
51	LAWLER BROTHERS & CO.	50 007	21 488	14 915	1 973	3 059	148	67 981	23 609	.3473	
52	L. B. WERDEN	908	390	978	129	-	-	1 886	519	.2752	
54	W. W. WILSON & CO.	11 185	4 806	23 025	3 047	1 034	50	35 244	7 903	.2242	
55	MARTIN BROS. & CO.	2 524	1 085	5 667	750	42	2	8 233	1 837	.2231	
56	MCCAUSLAND, HOAG & VAUGHAN	23 365	10 040	5 938	786	4 321	210	33 624	11 036	.3282	
57	MERRION & WILKINS	-	-	-	-	120 576	5 848	120 576	5 848	.0485	
58	MILLER, WHITE & WOODS	17 507	7 523	25 786	3 411	2 685	130	45 978	11 064	.2406	
59	MINTEER, HUBBIRD & CO.	5 261	2 261	2 913	385	131	6	8 305	2 652	.3193	
60	CHAS. H. MOBERLY	302	130	322	43	-	-	624	173	.2772	
61	MULLEN COM. CO.	3 178	1 366	11 438	1 513	38	2	14 654	2 881	.1966	
62	MURRY & MCDOWELL	3 878	1 666	11 653	1 542	448	22	15 979	3 230	.2021	
63	MUTUAL LIVESTOCK COM. CO.	6 078	2 612	16 556	2 190	988	48	23 622	4 850	.2053	
64	NALLEY COM. CO.	1 640	705	3 767	498	21	1	5 428	1 204	.2218	
65	JOS. F. NASH	404	174	2 635	349	177	9	3 216	532	.1654	
66	NATIONAL LIVESTOCK COM. CO.	41 411	17 794	43 314	5 730	17 736	860	102 461	24 384	.2380	
67	E. F. WOELFER & CO.	1 314	565	766	101	-	-	2 080	666	.3201	
68	HAFNER, NIXON COM. CO.	1 693	727	6 792	699	171	8	5 656	1 634	.1888	
69	NORTHWESTERN L. S. COM. CO.	11 048	4 747	12 815	1 695	2 964	144	26 627	6 586	.2455	
70	SILAS PALMER & SONS	16 415	7 054	12 303	1 627	230	11	28 948	8 692	.3003	
71	WOOD BROTHERS	20 582	8 844	16 337	2 161	28 671	1 391	65 590	12 396	.1890	
72	JOHN PATTERSON & SON	329	141	308	41	-	-	637	182	.2857	
73	PETERSON, TURNBULL & CO.	9 782	4 203	19 189	2 539	359	17	29 330	6 759	.2304	
75	QUINN COM. CO.	4 437	1 907	2 162	286	8	-	6 607	2 193	.3319	
76	GLEN K. WOOD & CO.	241	104	1 129	149	-	-	1 370	253	.1847	
77	RICE BROTHERS	16 515	7 096	21 249	2 811	3 219	156	40 983	10 063	.2455	
78	ALEX. RINDERLE & CO.	4 605	1 979	20 777	2 749	673	33	26 055	4 761	.1827	
79	ROACH L. S. COM. CO.	1 563	672	322	43	-	-	1 885	715	.3793	
80	CHAS. O. ROBINSON & CO.	4 620	1 985	1 218	161	687	33	6 525	2 179	.3340	
81	ROSENBAUM BROTHERS & CO.	6 854	2 945	4 388	581	6 999	339	18 241	3 865	.2119	
82	SARSFIELD, SCHROCK COM. CO.	3 196	1 373	15 178	2 008	223	11	18 597	3 392	.1824	
83	YANCEY, SINNARD & ROBERTS	7 269	3 123	16 665	2 205	1 891	92	25 825	5 420	.2099	
85	SCHROEDER L. S. COM. CO.	5 122	2 201	22 429	2 967	125	6	27 676	5 174	.1869	
86	SHELDON COM. CO.	428	184	1 665	220	3	-	2 096	404	.1927	
87	SHERWOOD & SON	4 438	1 907	16 309	2 158	1 159	56	21 906	4 121	.1881	
88	W. F. YOUNG & CO.	54	23	108	14	1	-	163	37	.2270	
90	W. R. SMITH & SONS	-	-	-	-	66 074	3 205	66 074	3 205	.0485	
92	STAFFORD BROTHERS	9 758	4 193	16 441	2 175	993	48	27 192	6 416	.2360	
93	STANDARD L. S. COM. CO.	8 190	3 519	21 854	2 891	1 515	73	31 559	6 483	.2054	
94	STARRETT L. S. COM. CO.	2 511	1 079	2 830	374	18	-	5 359	1 453	.2711	
96	ST. JOHN, COMPTON, DUNBAR CO.	5 220	2 243	6 287	832	86	4	11 593	3 079	.2656	
97	STOCKMENS L. S. COM. CO.	14 929	6 415	21 604	2 858	735	36	37 268	9 309	.2498	
102	WILL C. WOOD	282	121	3 161	418	302	15	3 745	554	.1479	
104	INGWERSEN, MOSIER & INGWERSEN	13 681	5 879	19 412	2 568	779	38	33 872	8 485	.2505	
53	CHAS. L. WILLS & CO.	-	-	159	21	-	-	159	21	.1321	
105	BROTT L. S. COM. CO.	662	284	12 275	1 624	39	2	12 976	1 910	.1472	
108	W. O. JENNINGS & CO.	1 936	2 121	3 355	444	110	5	8 401	2 570	.3059	
110	STEPHENSON COM. CO.	775	333	7 690	1 017	12	1	8 477	1 351	.1594	
106	HALPIN LIVESTOCK COM. CO.	773	332	202	27	-	-	975	359	.3682	
	ALL FIRMS	706 370	303 527	1 032 761	136 632	576 107	27 941	2 315 238	468 100	.2022	

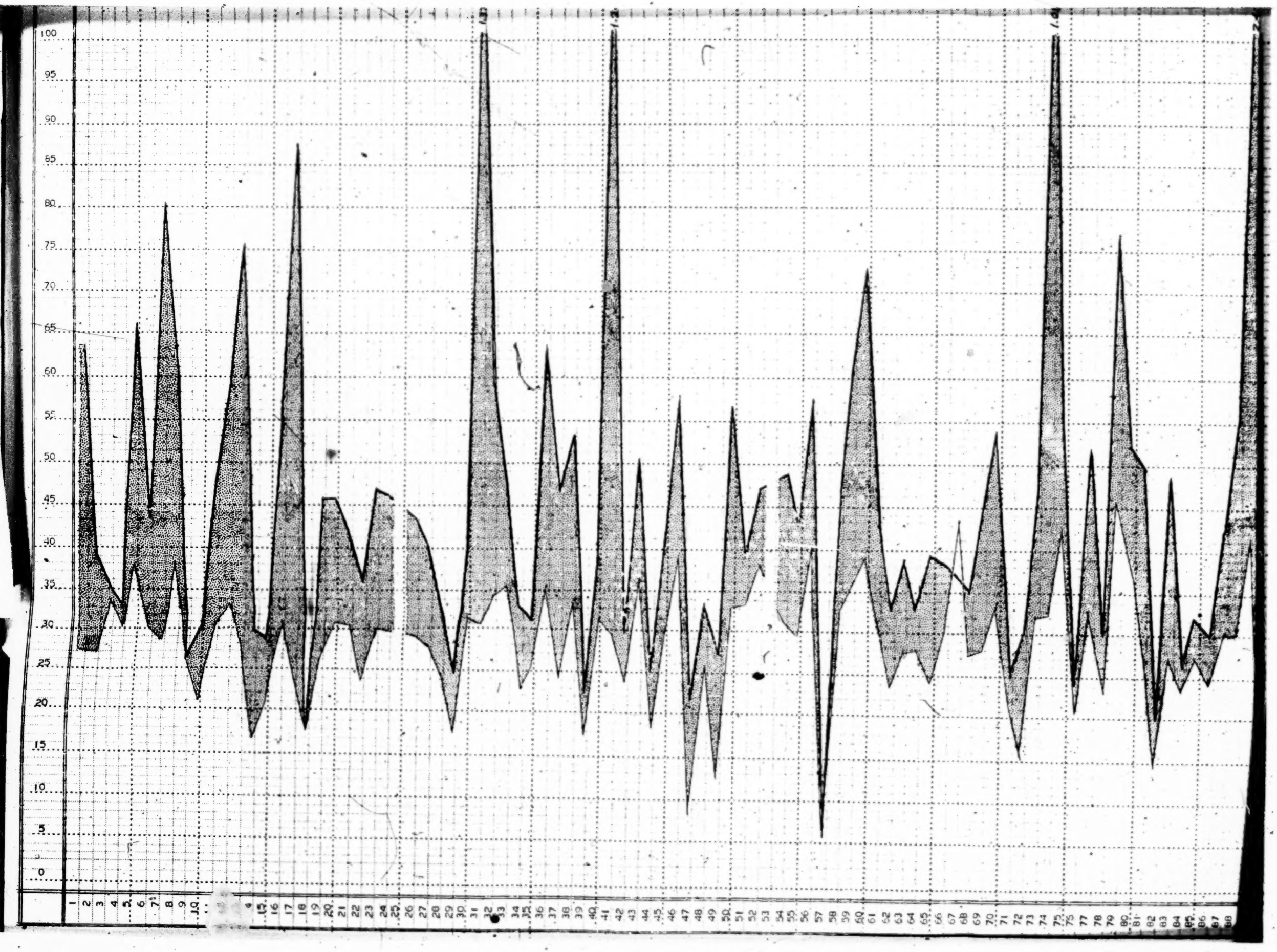
HEAVY LINE - Cost per head - inc. salary appraisal adjustment
LIGHT LINE - Secretary's commissions per head
DOTTED AREA - Loss under Secretary's rates

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,809

THE COST PER HEAD FOR THE YEAR 1930 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE COMMISSIONS PER HEAD FOR THE YEAR 1930 - UNDER THE PRESENT AND UNDER THE SECRETARY'S RATES

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)

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adjustment

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

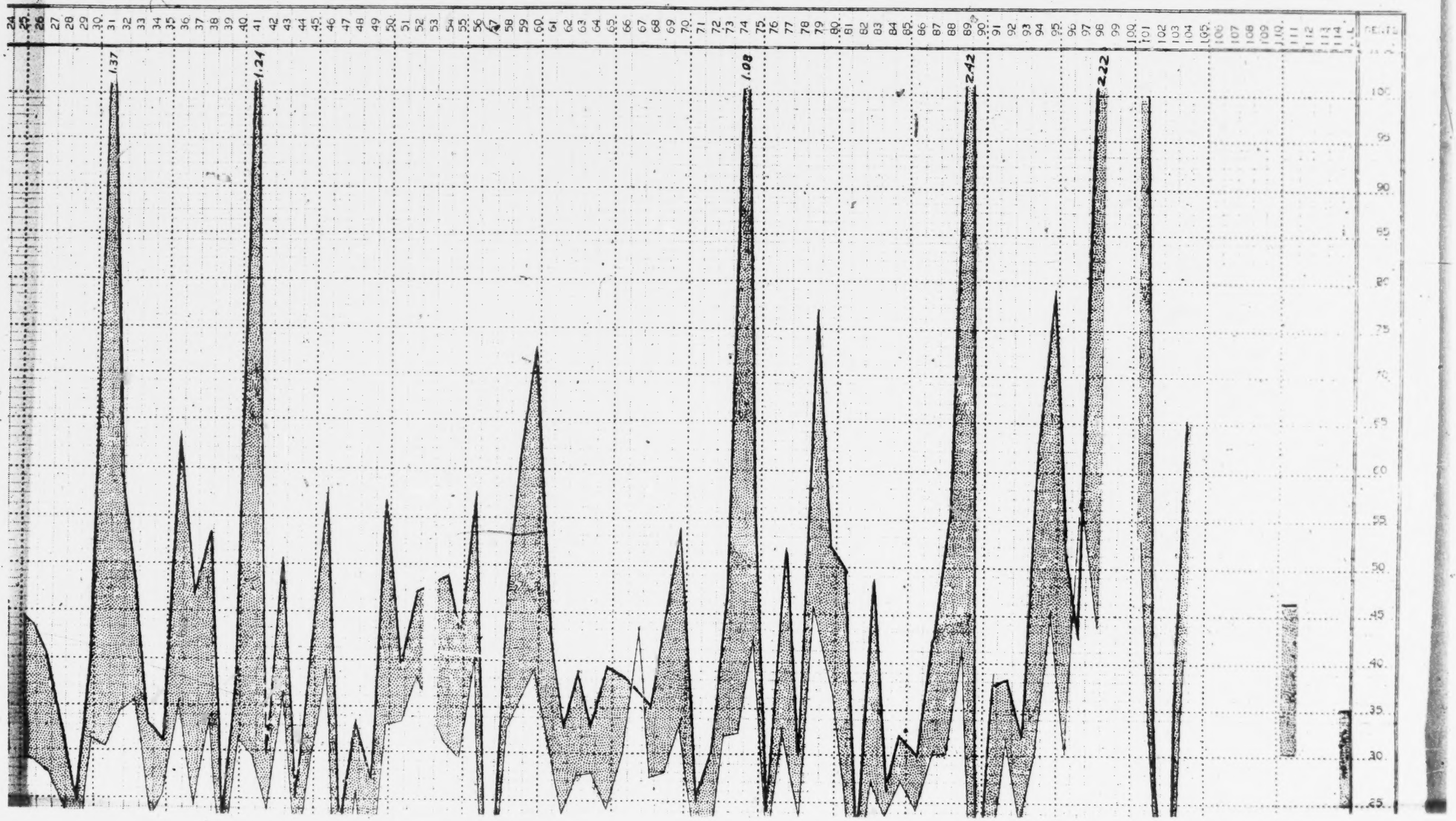
Petitioners' Exhibit No. 4
Witness, Earle D. Mudd.

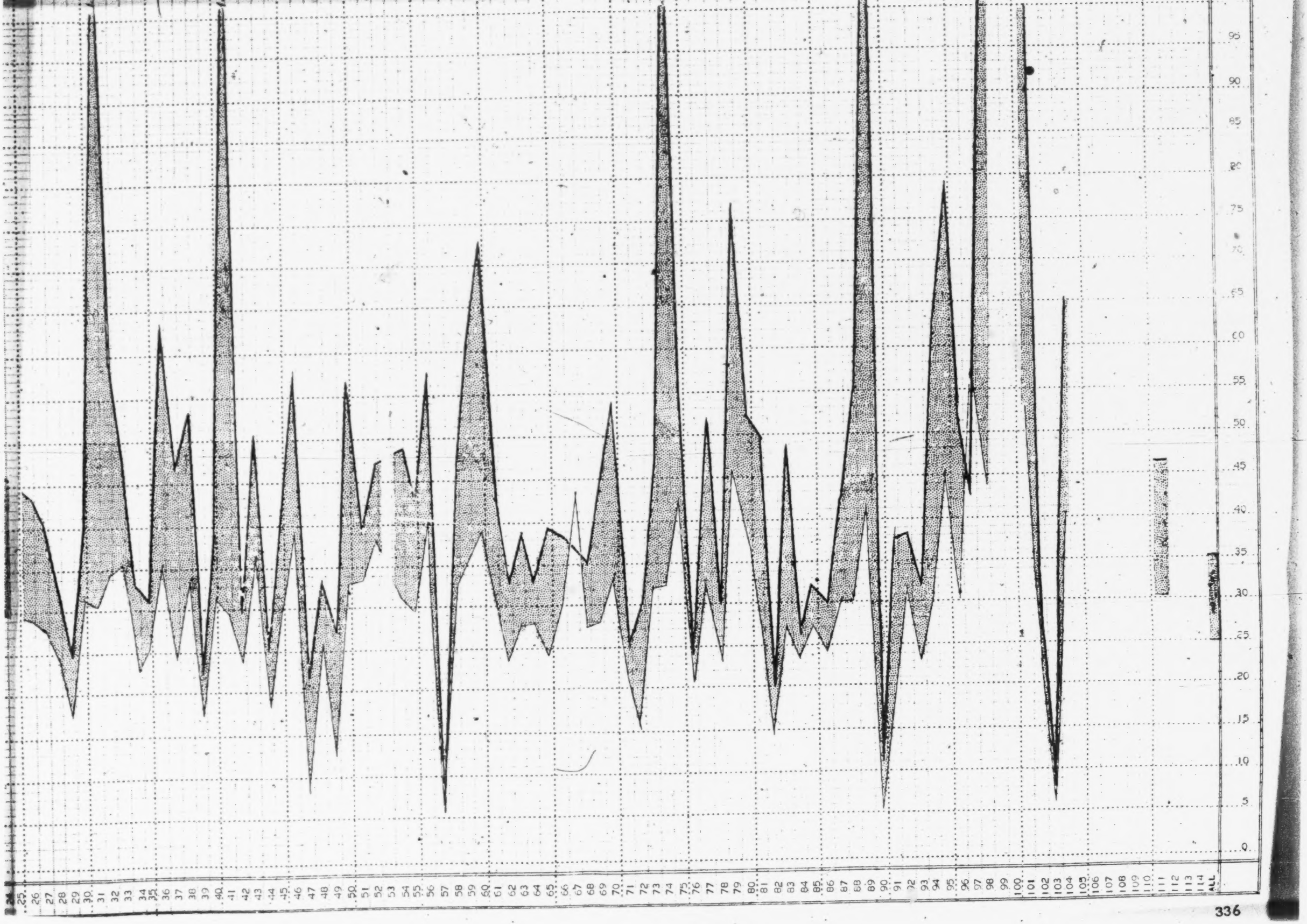
THE COST PER HEAD FOR THE YEAR 1932 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE COMMISSIONS PER HEAD FOR THE YEAR 1932 - UNDER THE PRESENT AND UNDER THE SECRETARY'S RATES

Sheet 1 of 3

SCHEDULE NO. 3

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)

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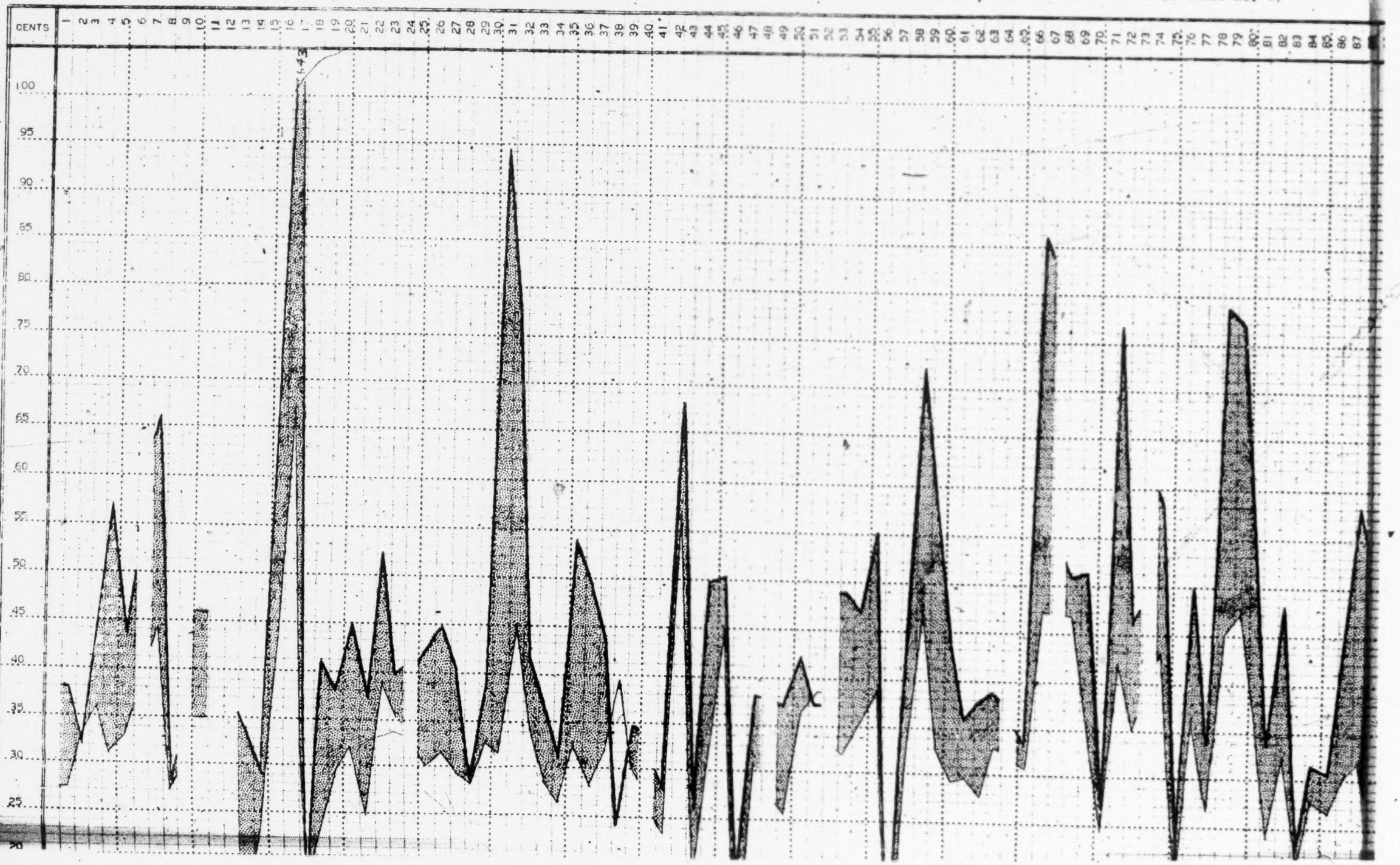
HEAVY LINE - Cost per head - inc. salary appraisal adjustment
LIGHT LINE - Secretary's commissions per head
DENSE AREA - Loss under Secretary's rates

THE COST PER HEAD FOR THE YEAR 1932 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
compared with
THE COMMISSIONS PER HEAD FOR THE YEAR 1931 - UNDER THE PRESENT AND UNDER THE SECRETARY'S RATES

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)



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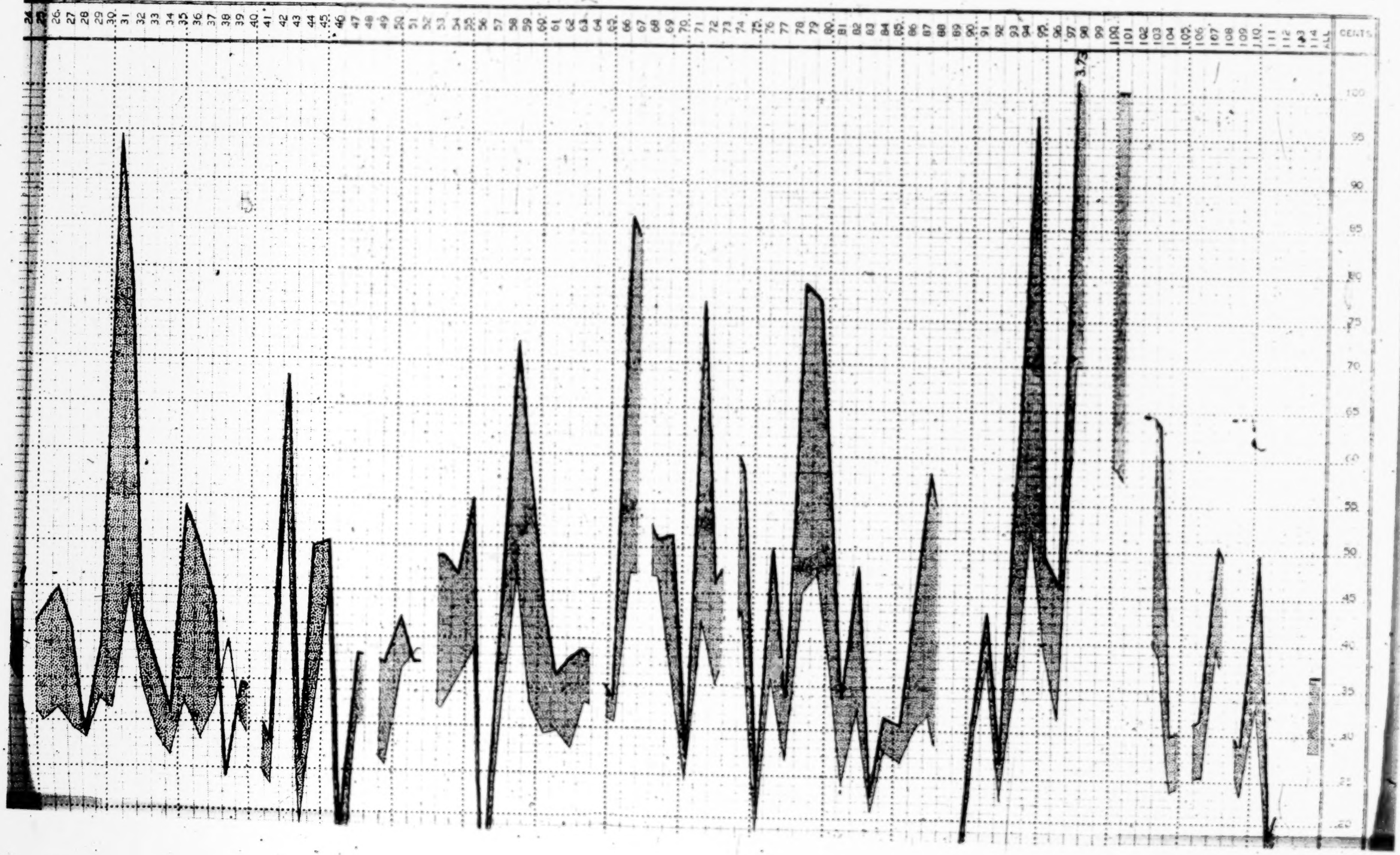
Adjustment

THE COST PER HEAD FOR THE YEAR 1933 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
compared with
THE COMMISSIONS PER HEAD FOR THE YEAR 1933 - UNDER THE PRESENT AND UNDER THE SECRETARY'S RATES

SCHEDULE NO. 3

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)

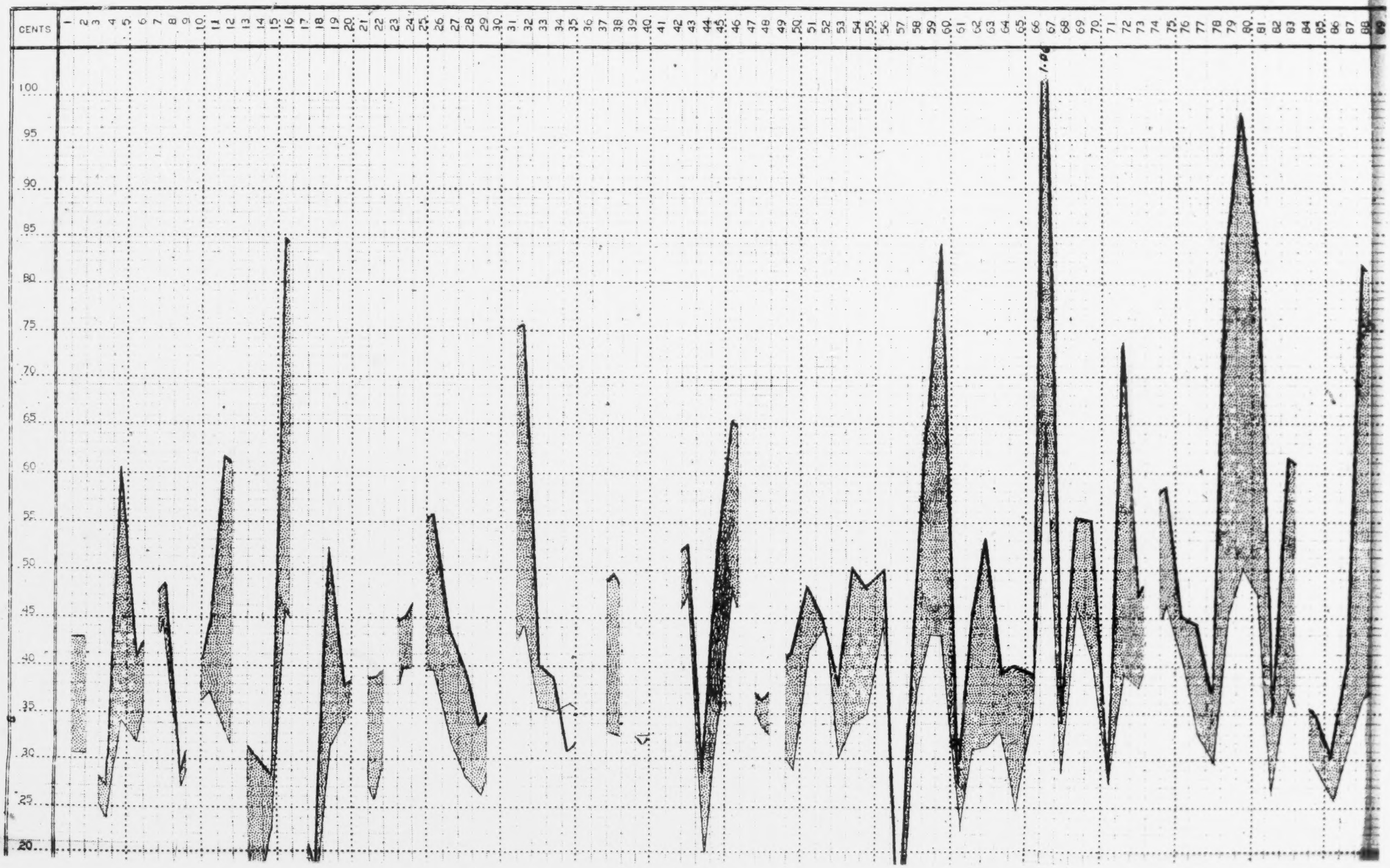


337

HEAVY LINE - Cost per head - inc. salary appraisal adjustments
LIGHT LINE - Secretary's commissions per head
DENSE AREA - Loss under Secretary's rates

THE COST PER HEAD FOR THE FIRST FOUR MONTHS OF 1934 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE COMMISSIONS PER HEAD FOR THE FIRST FOUR MONTHS OF 1934 - UNDER THE PRESENT AND UNDER THE SECRETARY'S RATES

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)



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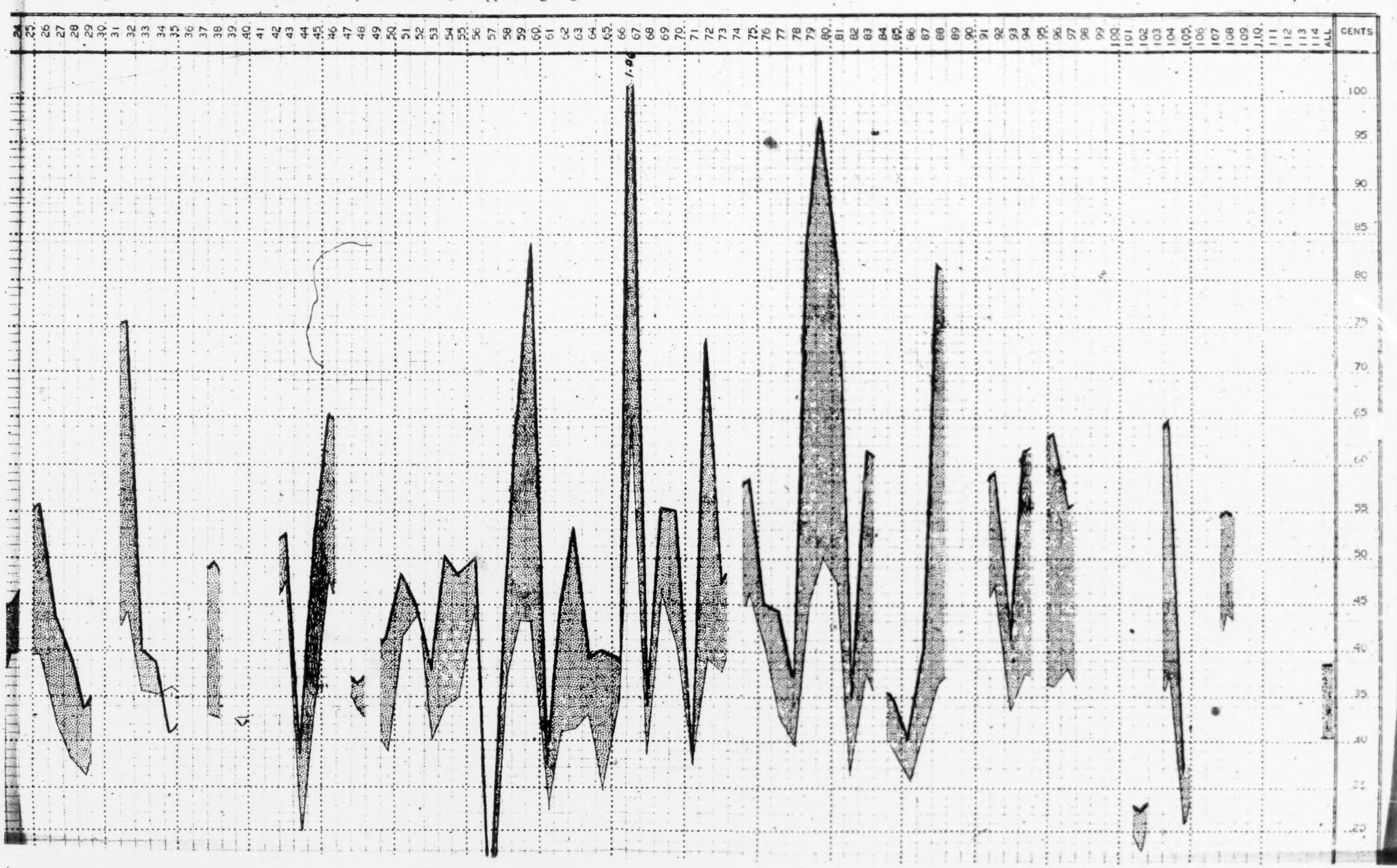
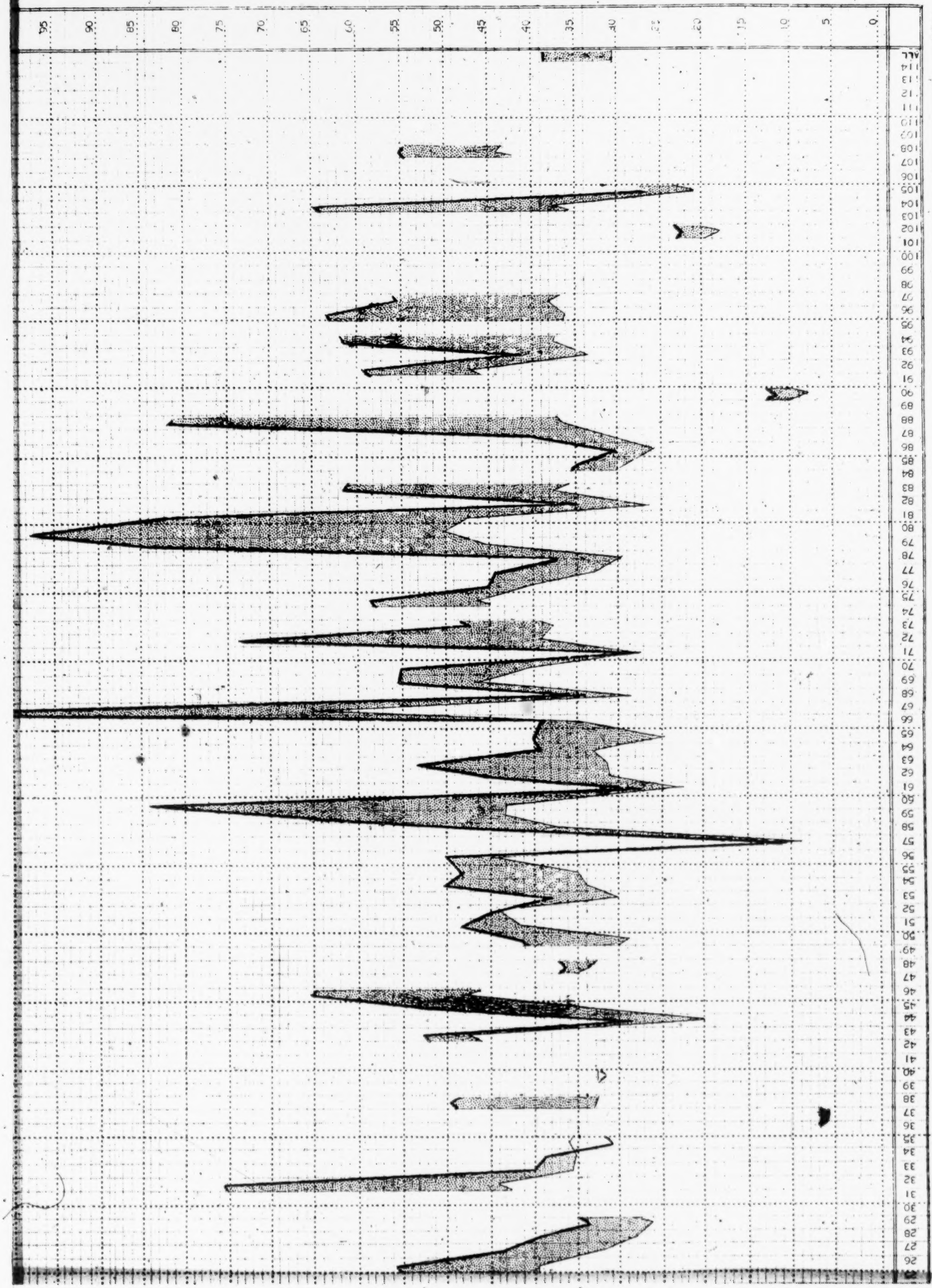
1 adjustments

THE COST PER HEAD FOR THE FIRST FOUR MONTHS OF 1934 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE COMMISSIONS PER HEAD FOR THE FIRST FOUR MONTHS OF 1934 - UNDER THE PRESENT AND UNDER THE SECRETARY'S RATES

SCHEDULE NO. 3

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)



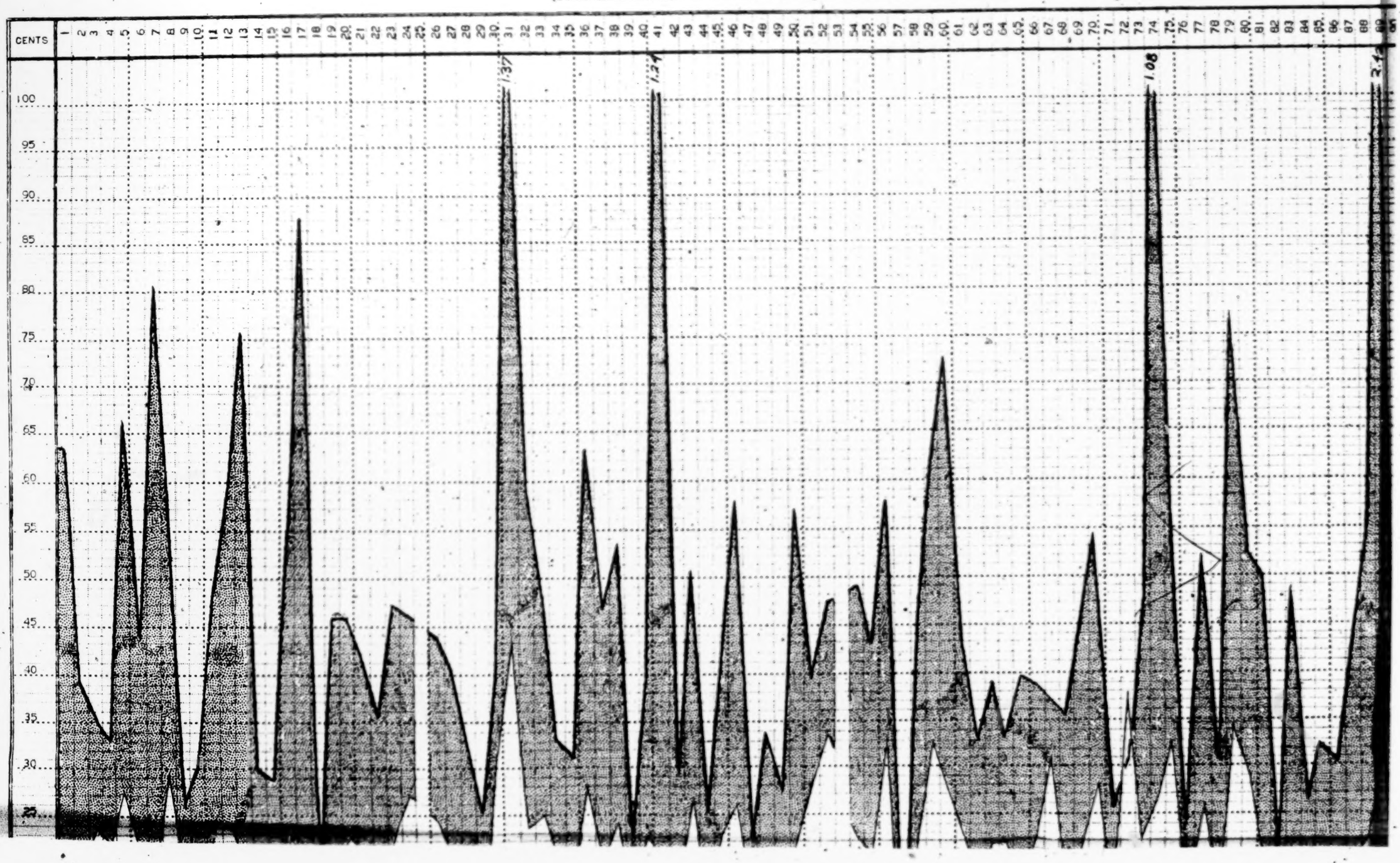


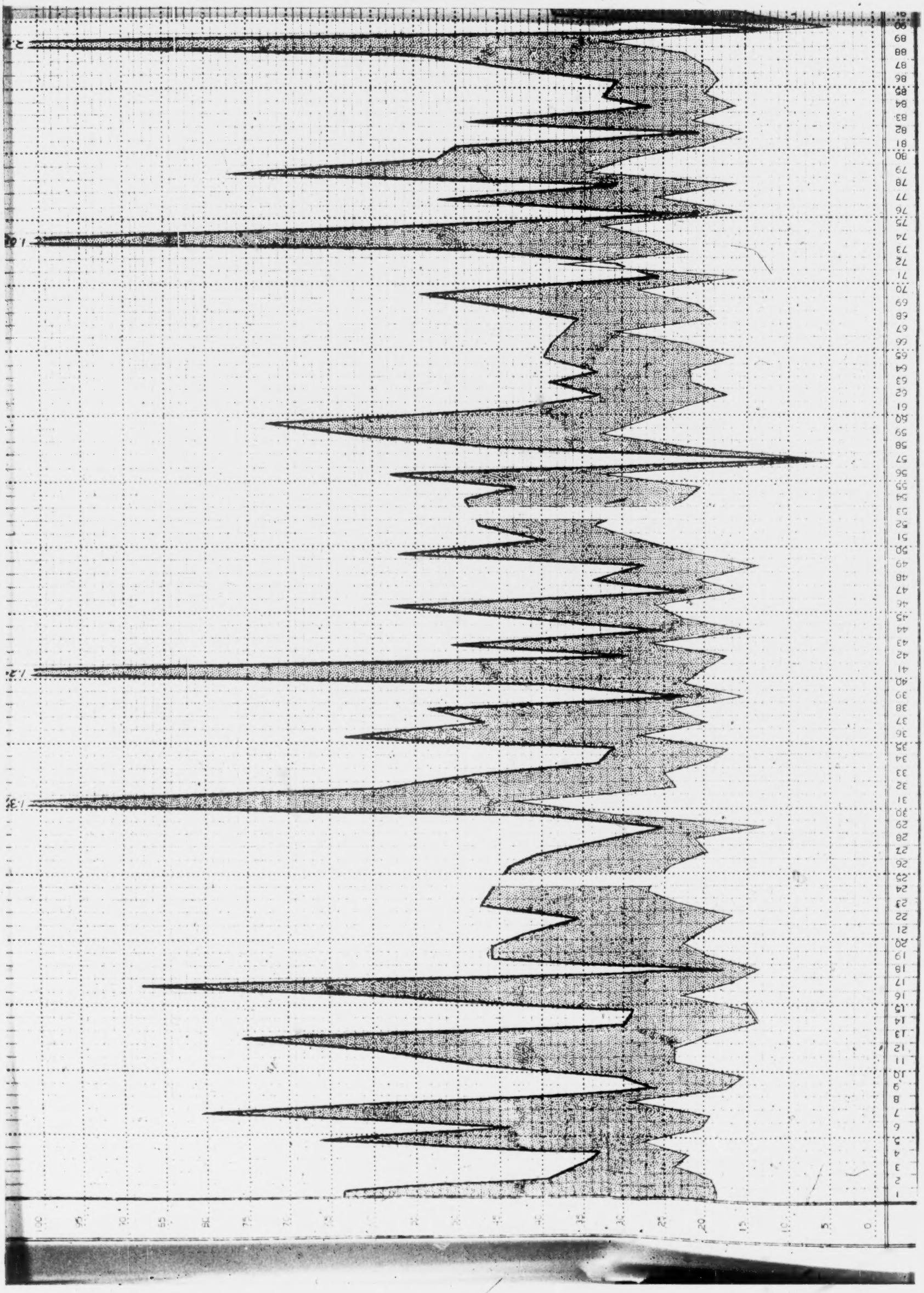
HEAVY LINE - Actual cost per head, inc. salary appraisal adjustments
LIGHT LINE - Secretary's reasonable cost per head
DENSE AREA - Reduction in costs under Secretary's rates

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

THE COST PER HEAD FOR THE YEAR 1932 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE SECRETARY'S REASONABLE COST PER HEAD FOR THE YEAR 1932

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedules Nos. 7 & 8)





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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO: 13,829

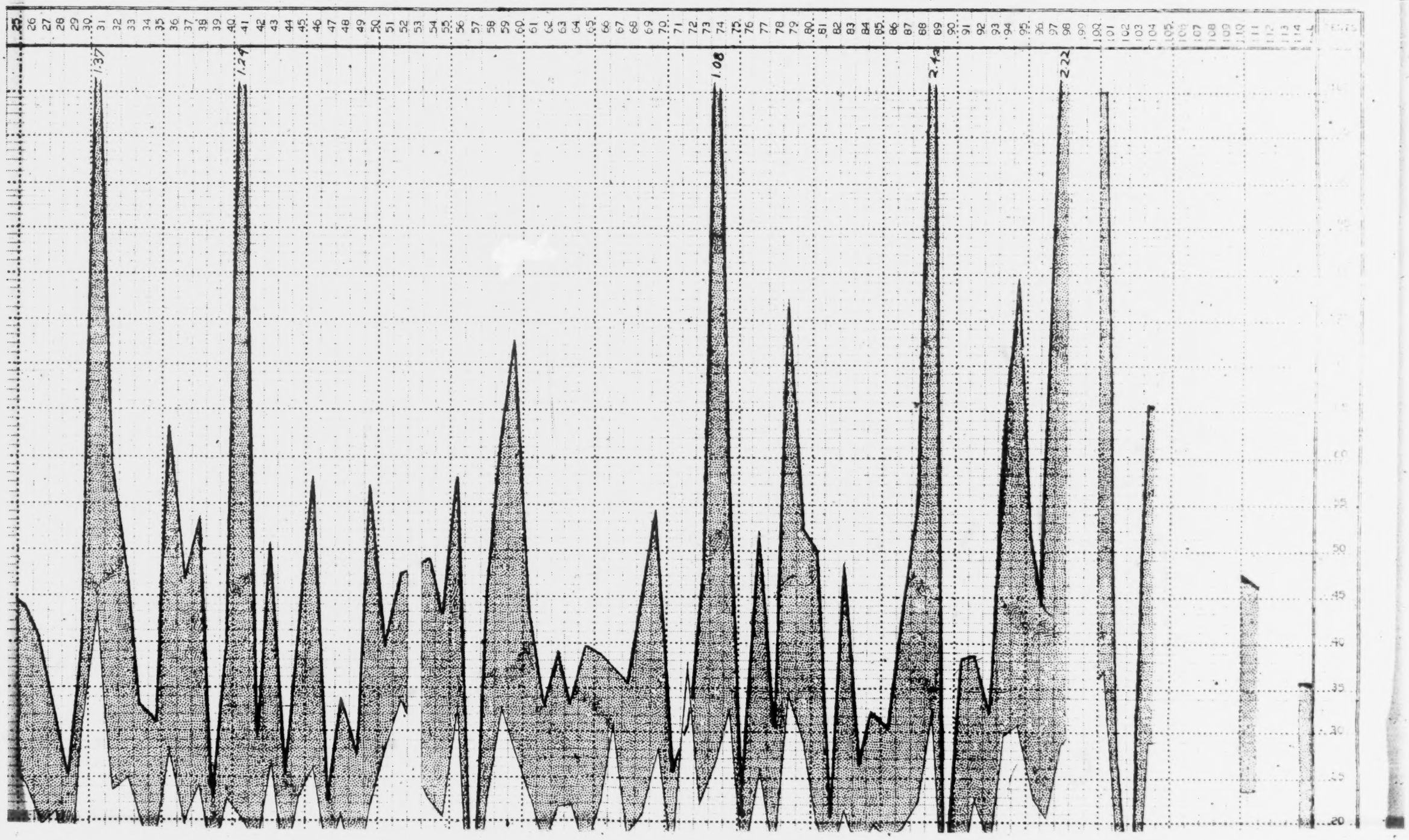
Petitioners' Exhibit No. 5
Witness, Earle D. Mudd.

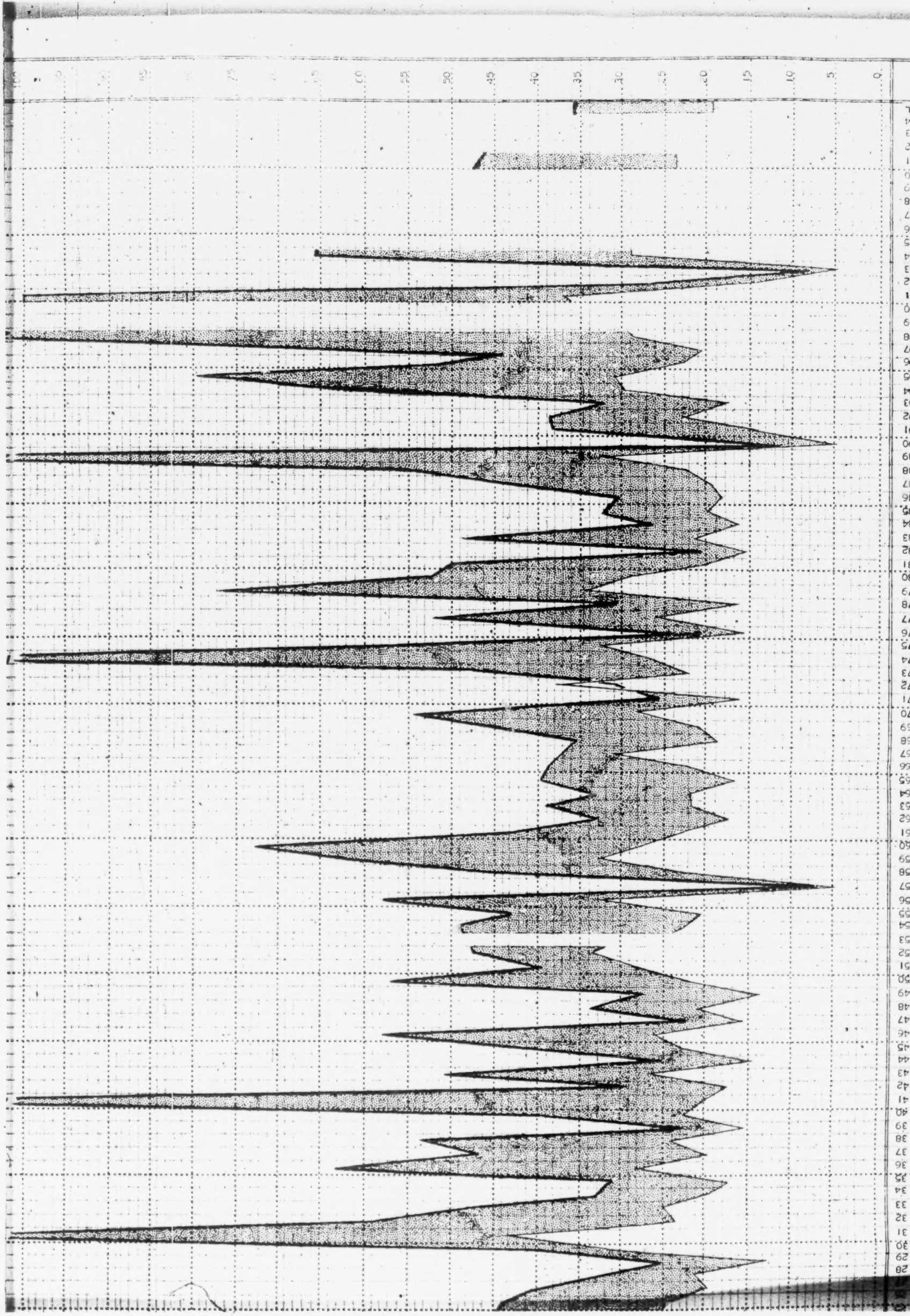
THE COST PER HEAD FOR THE YEAR 1932 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE SECRETARY'S REASONABLE COST PER HEAD FOR THE YEAR 1932

Sheet 1 of 3

SCHEDULE NO. 4

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedules Nos. 7 & 8)

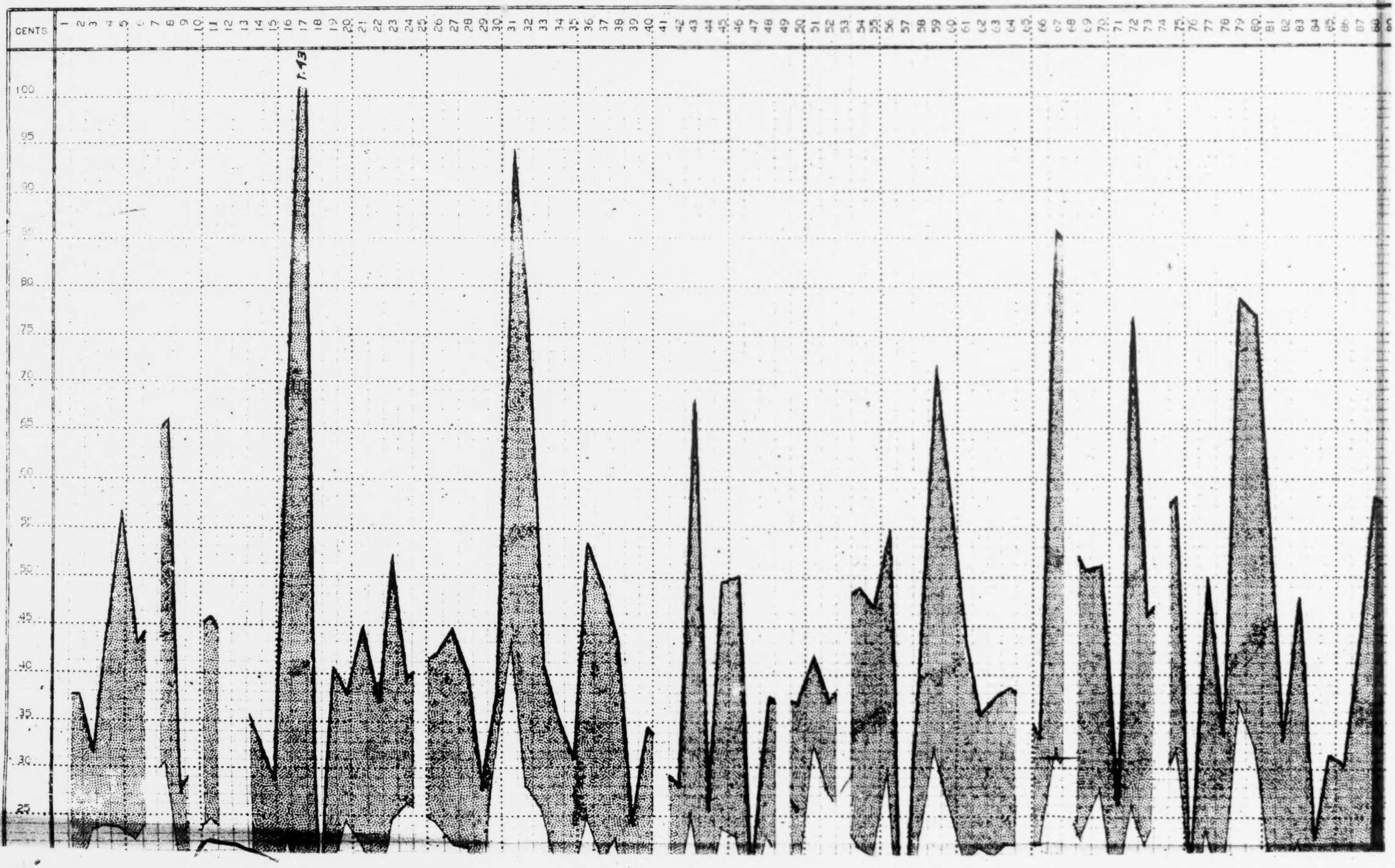


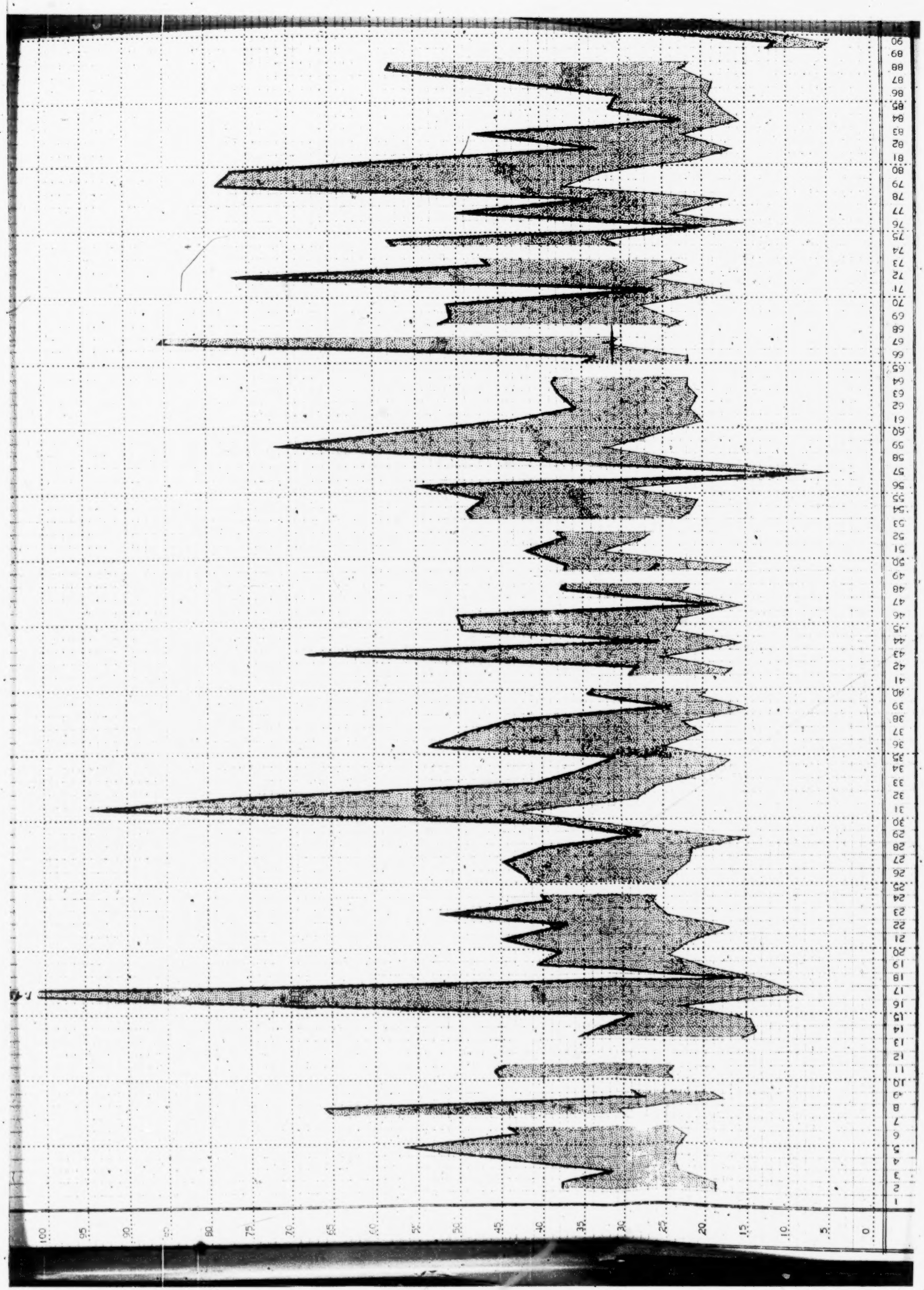


HEAVY LINE - Actual cost per head, inc. salary appraisal adjustments
LIGHT LINE - Secretary's reasonable cost per head
DENSE AREA - Reduction in costs under Secretary's rates

THE COST PER HEAD FOR THE YEAR 1933 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE SECRETARY'S REASONABLE COST PER HEAD FOR THE YEAR 1933

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedules Nos. 7 & 8)

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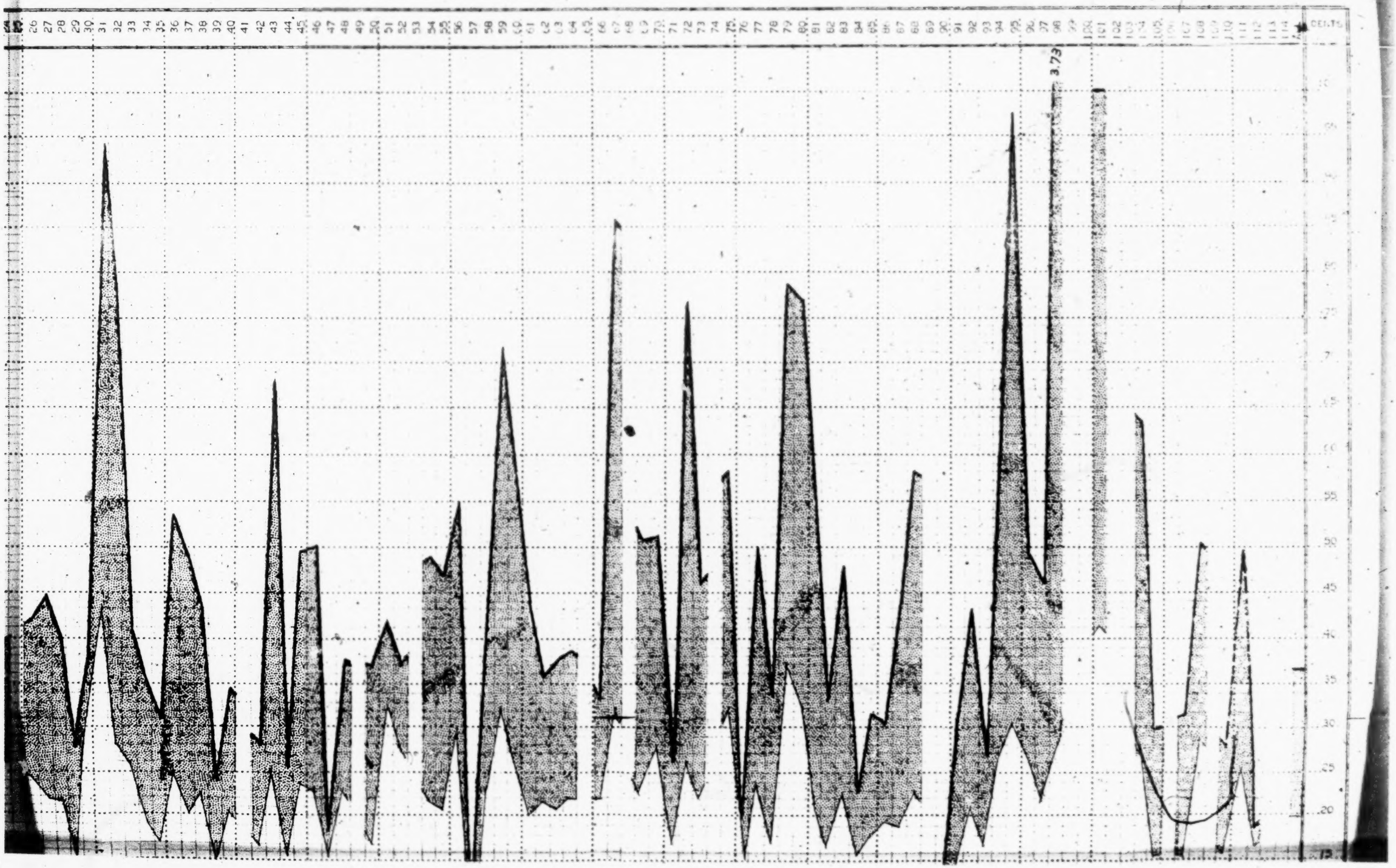
THE COST PER HEAD FOR THE YEAR 1933 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE SECRETARY'S REASONABLE COST PER HEAD FOR THE YEAR 1933

SCHEDULE NO. 4

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedules Nos. 7 & 8)



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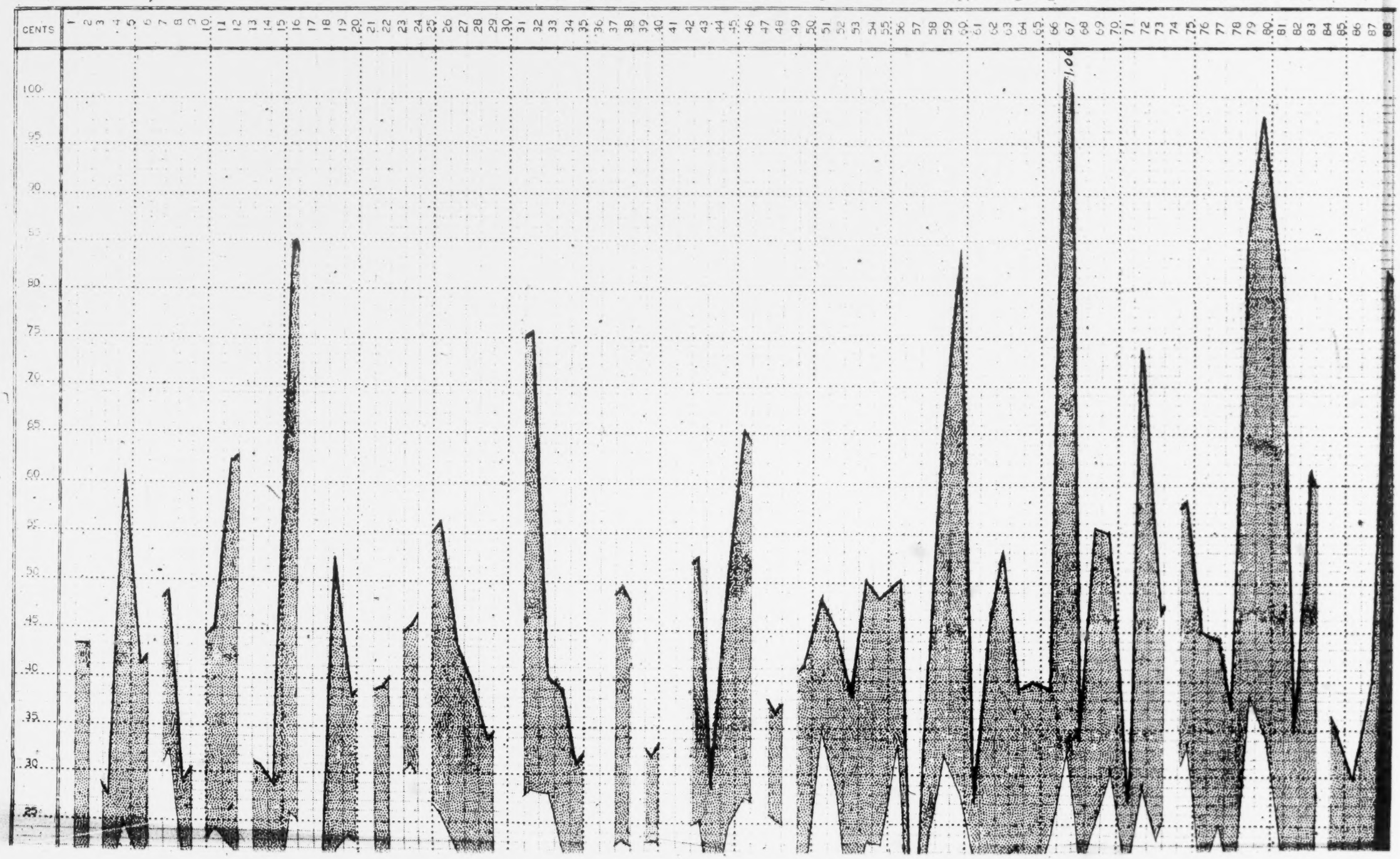
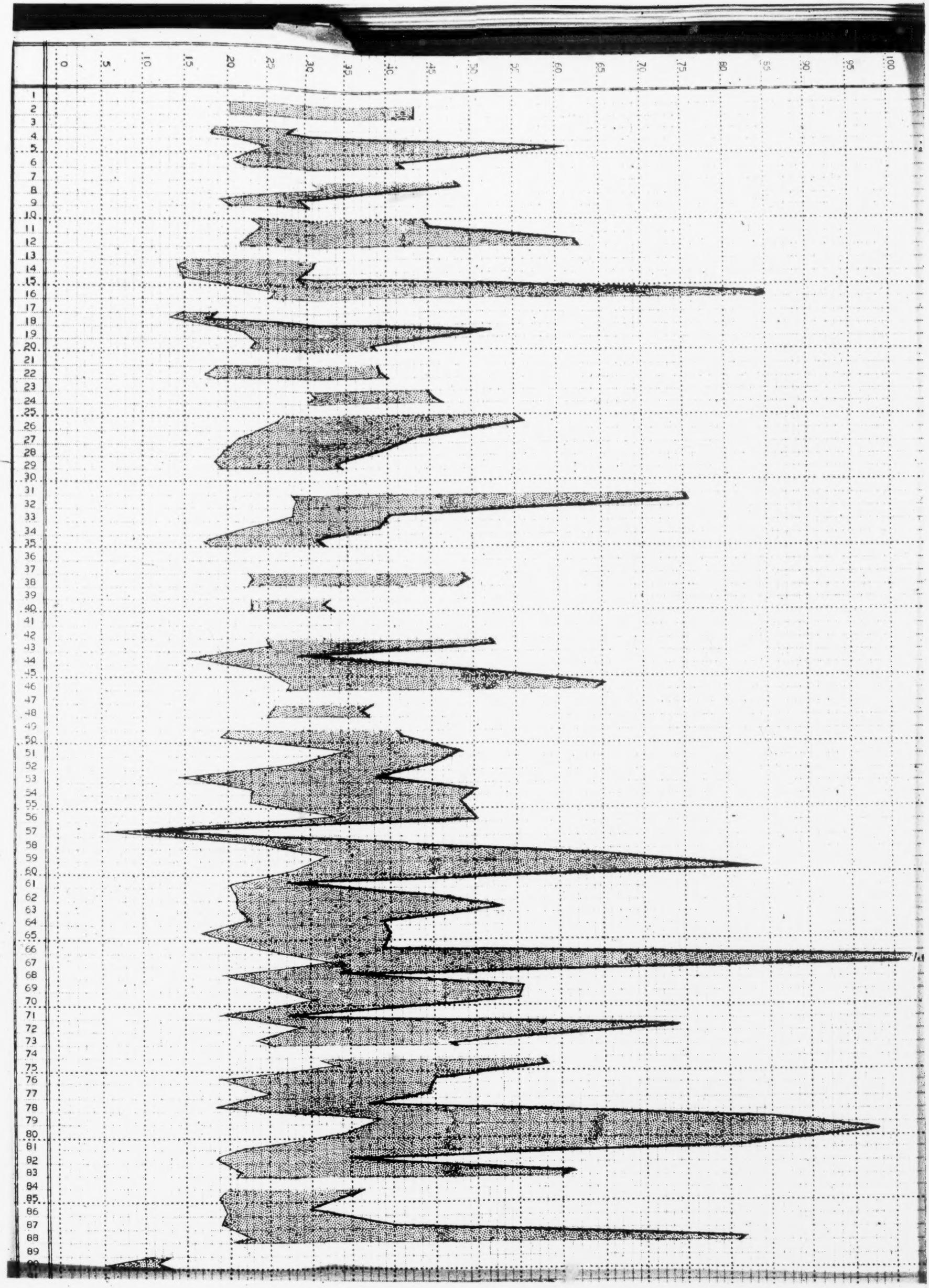
HEAVY LINE - Actual cost per head, inc. salary appraisal adjustments
LIGHT LINE - Secretary's reasonable cost per head
DENSE AREA - Reduction in costs under Secretary's rates

THE COST PER HEAD FOR THE FIRST FOUR MONTHS OF 1934 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with

THE SECRETARY'S REASONABLE COST PER HEAD FOR THE FIRST FOUR MONTHS OF 1934

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedules Nos. 7 & 8)

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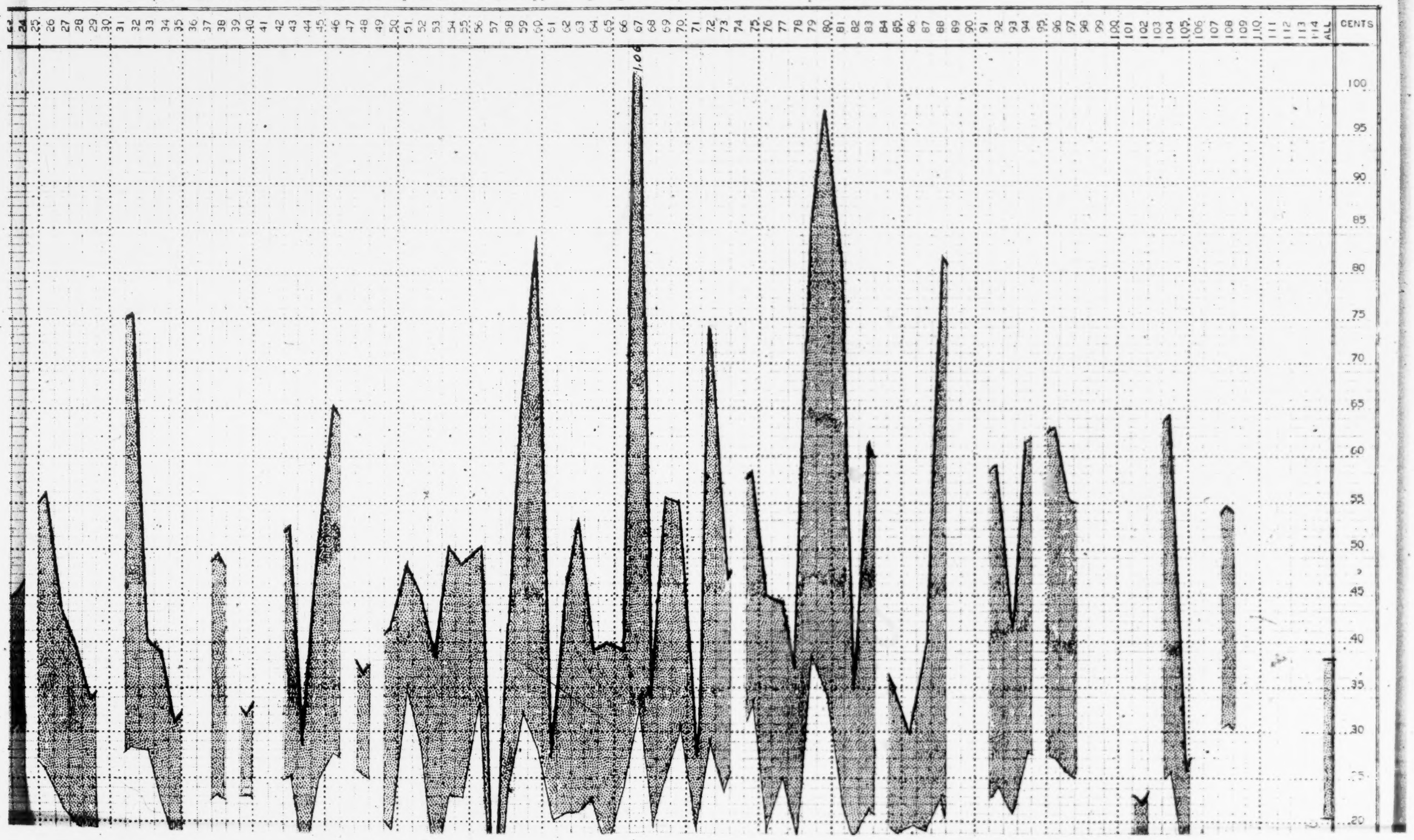
THE COST PER HEAD FOR THE FIRST FOUR MONTHS OF 1934 - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE SECRETARY'S REASONABLE COST PER HEAD FOR THE FIRST FOUR MONTHS OF 1934

SCHEDULE NO. 4

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedules Nos. 7 & 8)



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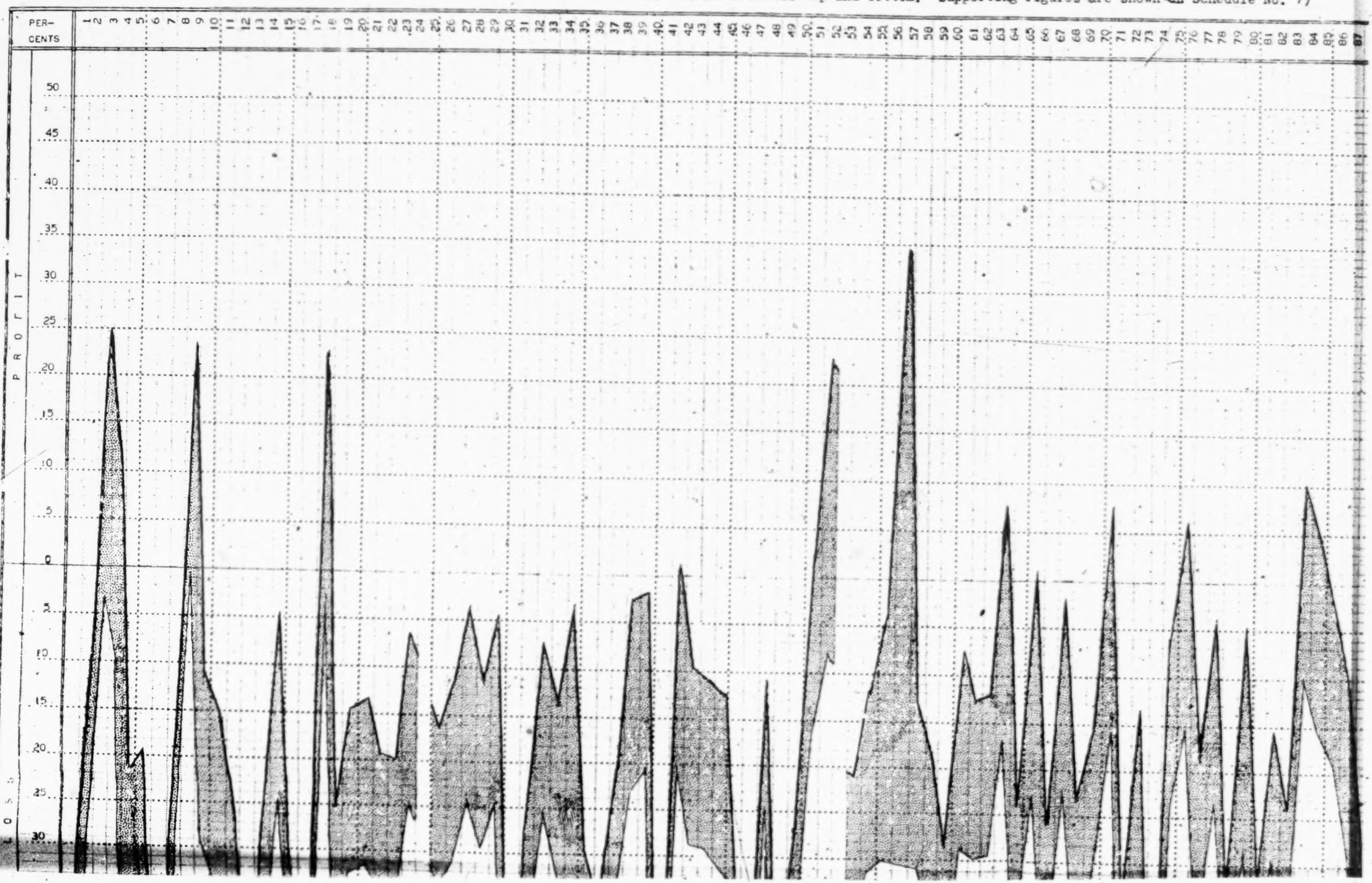
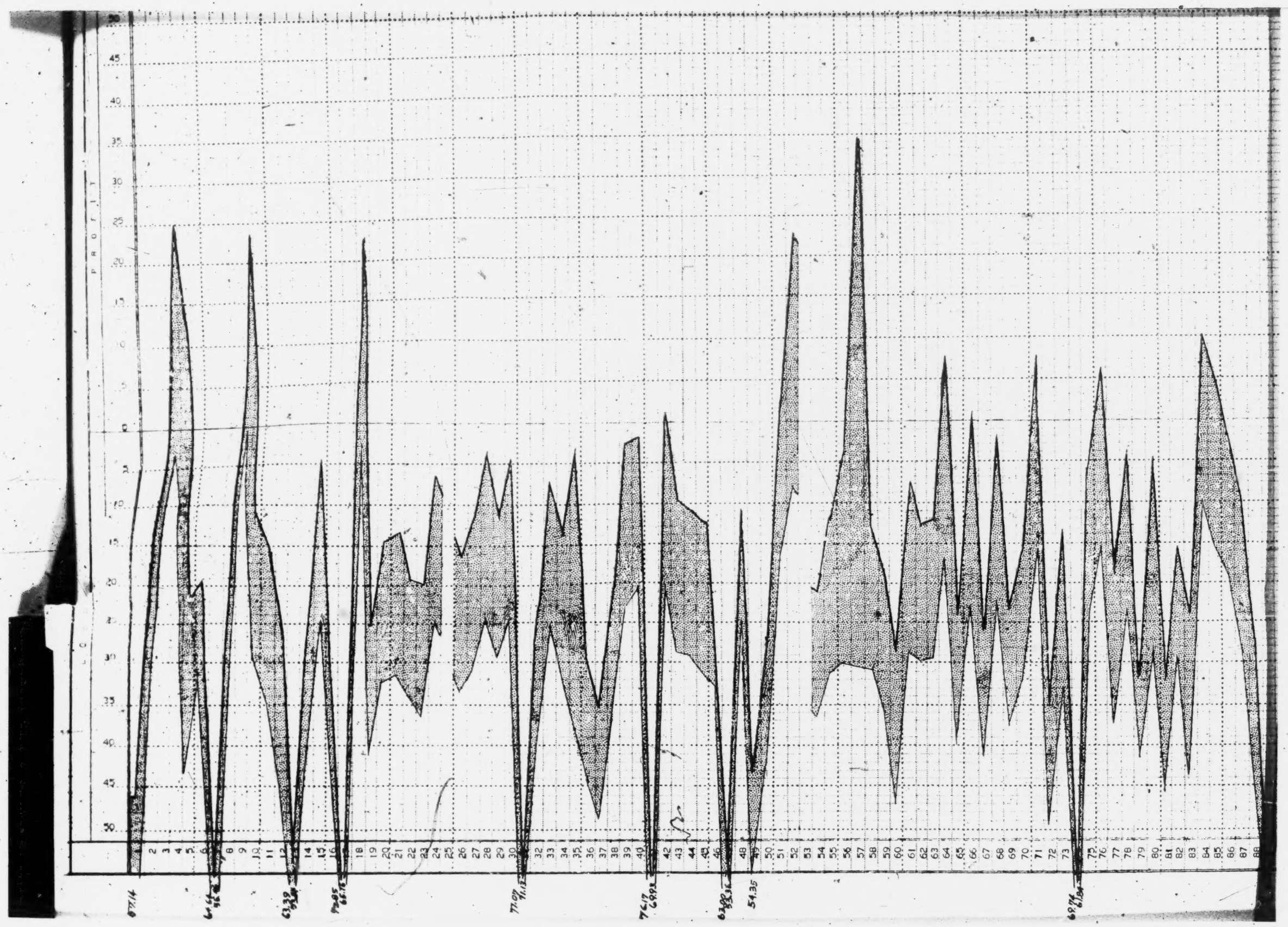
HEAVY LINE - Percent of profit or loss under present rates
LIGHT LINE - Percent of profit or loss under Secretary's rates
DENSE AREA - Reduction caused by Secretary's rates

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,829

PERCENT OF PROFIT OR LOSS UNDER PRESENT RATES - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE PERCENT OF PROFIT OR LOSS UNDER THE SECRETARY'S RATES
FOR THE YEAR 1932
(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)

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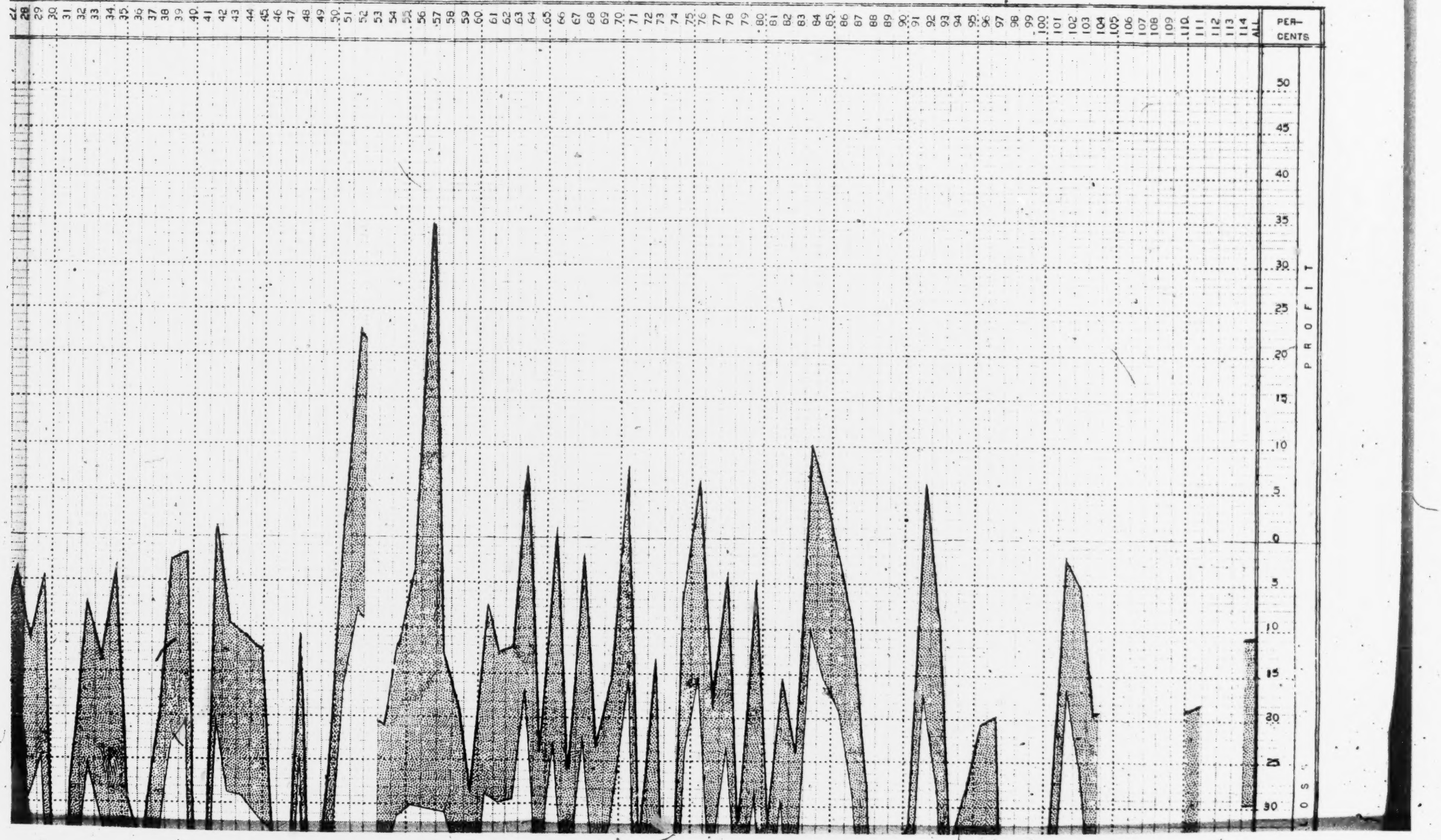
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13,829

Petitioners' Exhibit No. 6
Witness, Earle D. Mudd.

Sheet 1 of 3

PERCENT OF PROFIT OR LOSS UNDER PRESENT RATES - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE PERCENT OF PROFIT OR LOSS UNDER THE SECRETARY'S RATES
FOR THE YEAR 1932
(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)

SCHEDULE NO. 5



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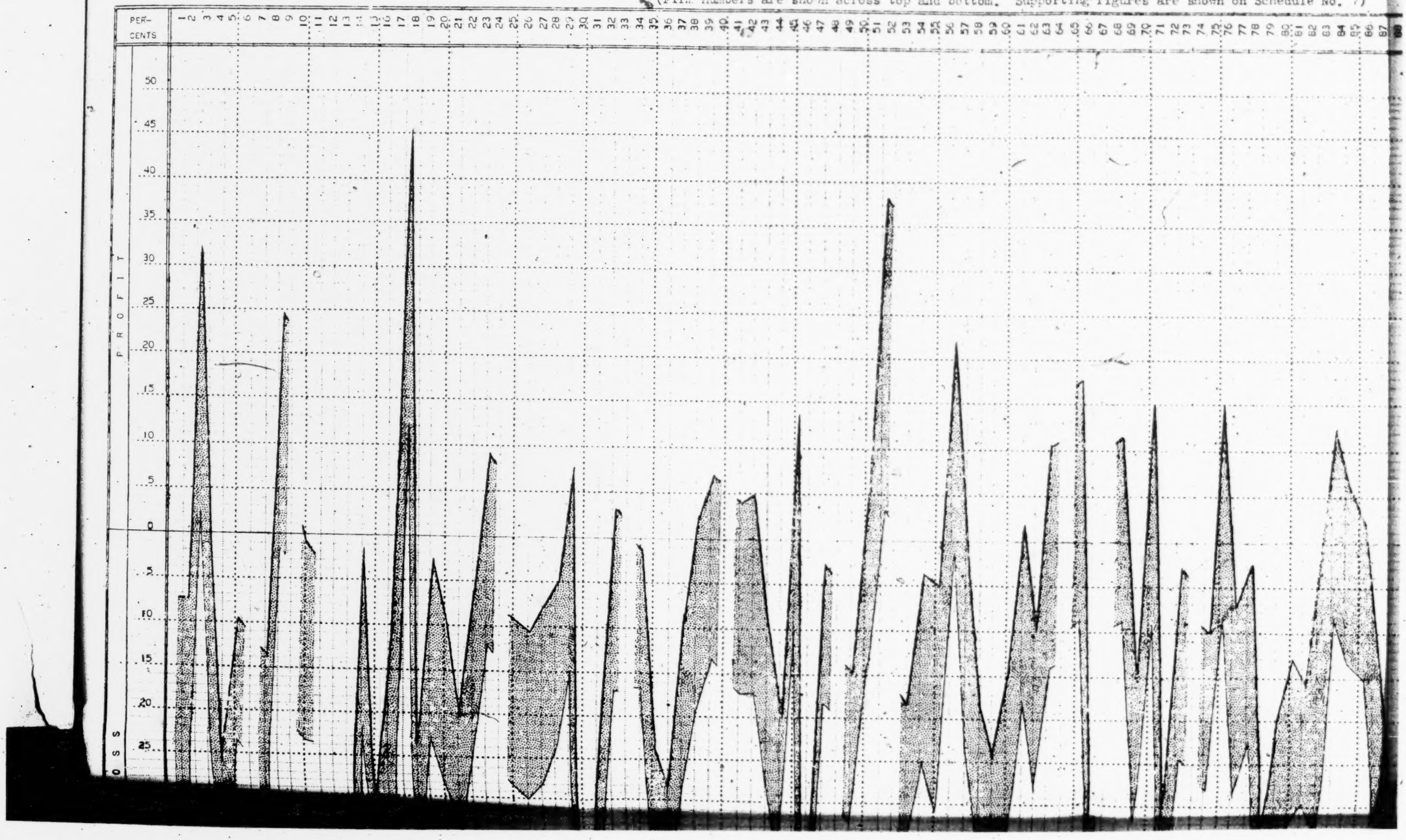
LOSS PROFIT

HEAVY LINE - Percent profit or loss under present rates
LIGHT LINE - Percent of profit or loss under Secretary's rates
DENSE AREA - Reduction caused by Secretary's rates

PERCENT OF PROFIT OR LOSS UNDER PRESENT RATES - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
PERCENT OF PROFIT OR LOSS UNDER THE SECRETARY'S RATES
FOR THE YEAR 1933

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)



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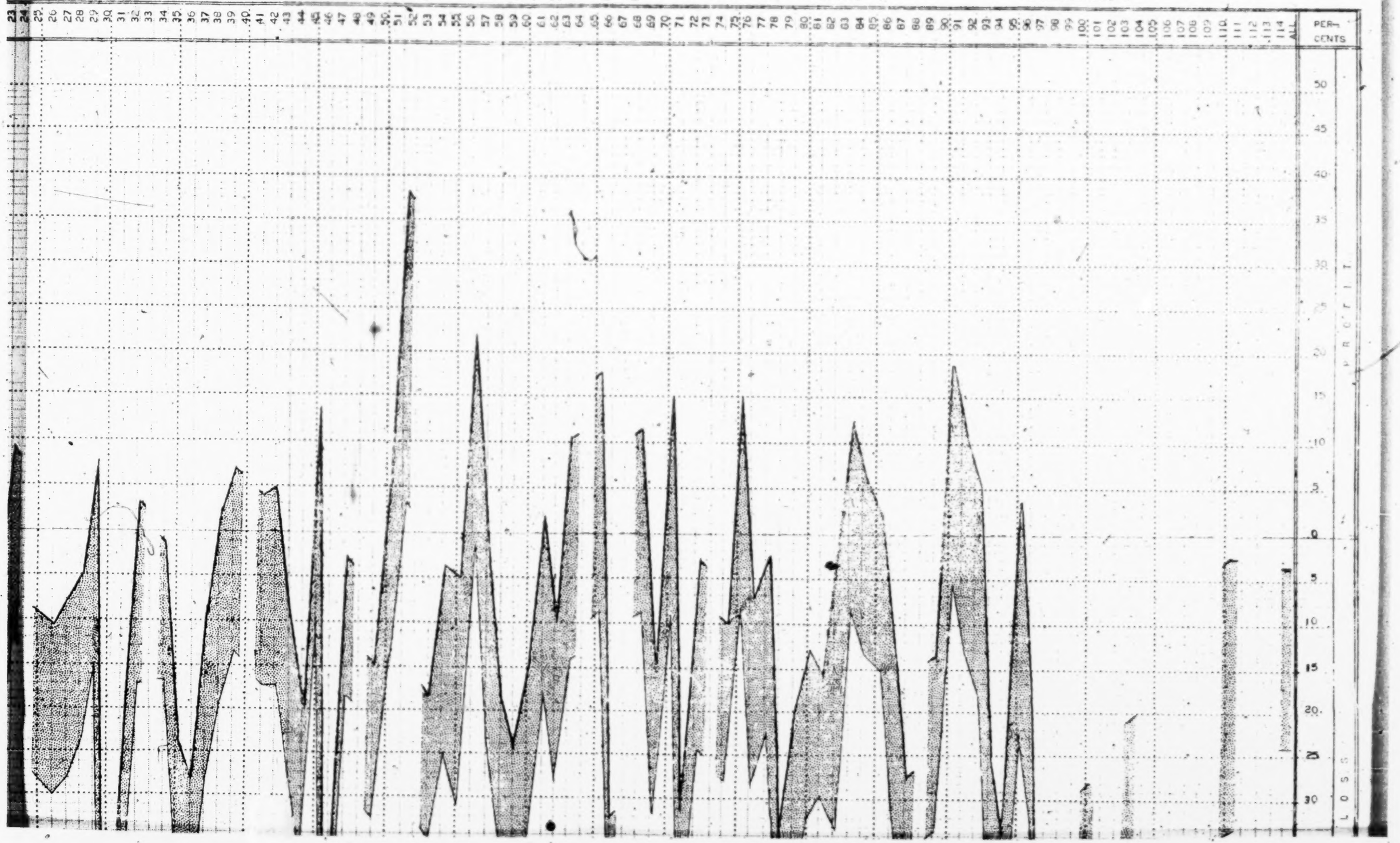
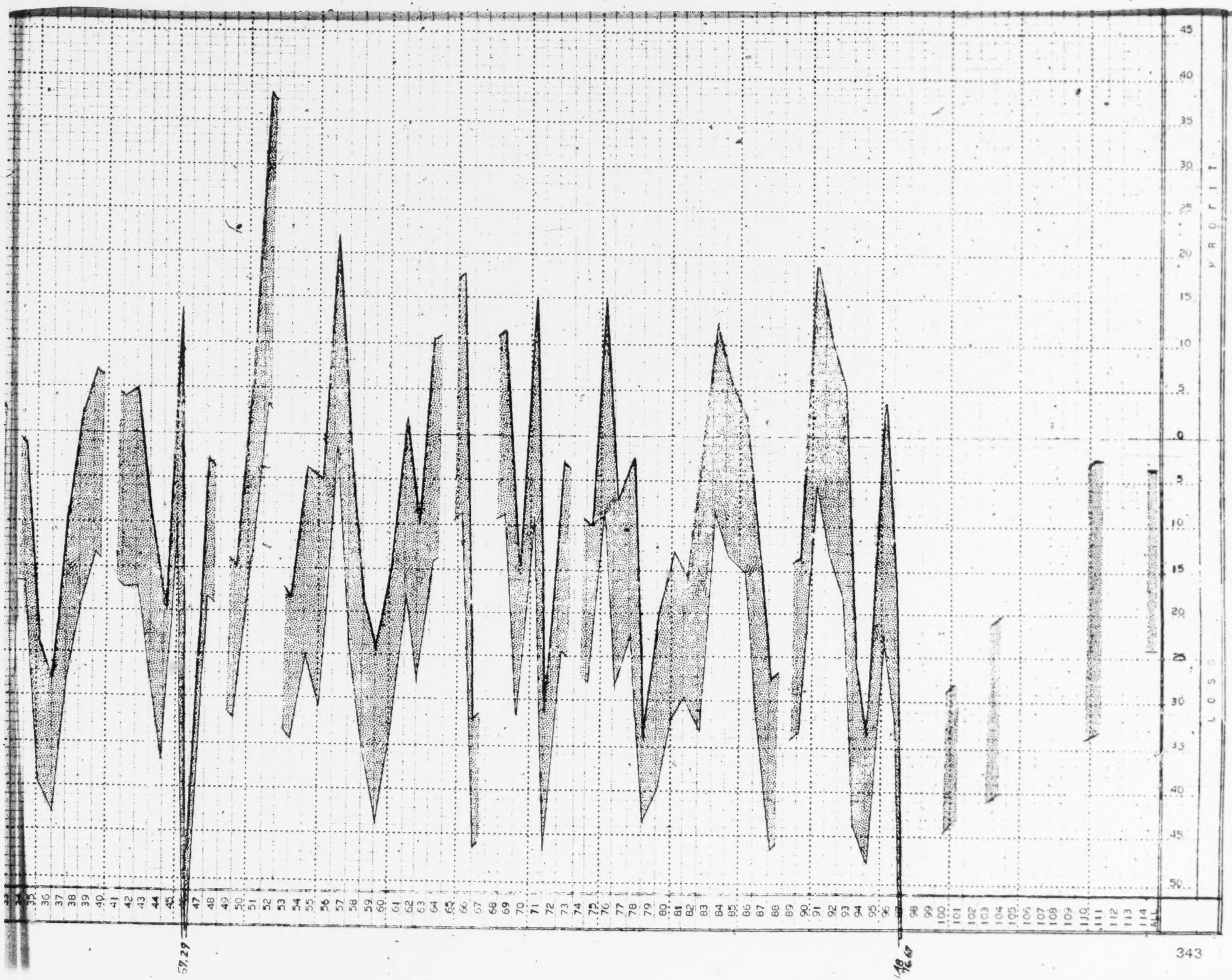
PERCENT OF PROFIT or LOSS UNDER PRESENT RATES - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
PERCENT OF PROFIT OR LOSS UNDER THE SECRETARY'S RATES
FOR THE YEAR-1933

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)

SCHEDULE NO. 5




PROFIT
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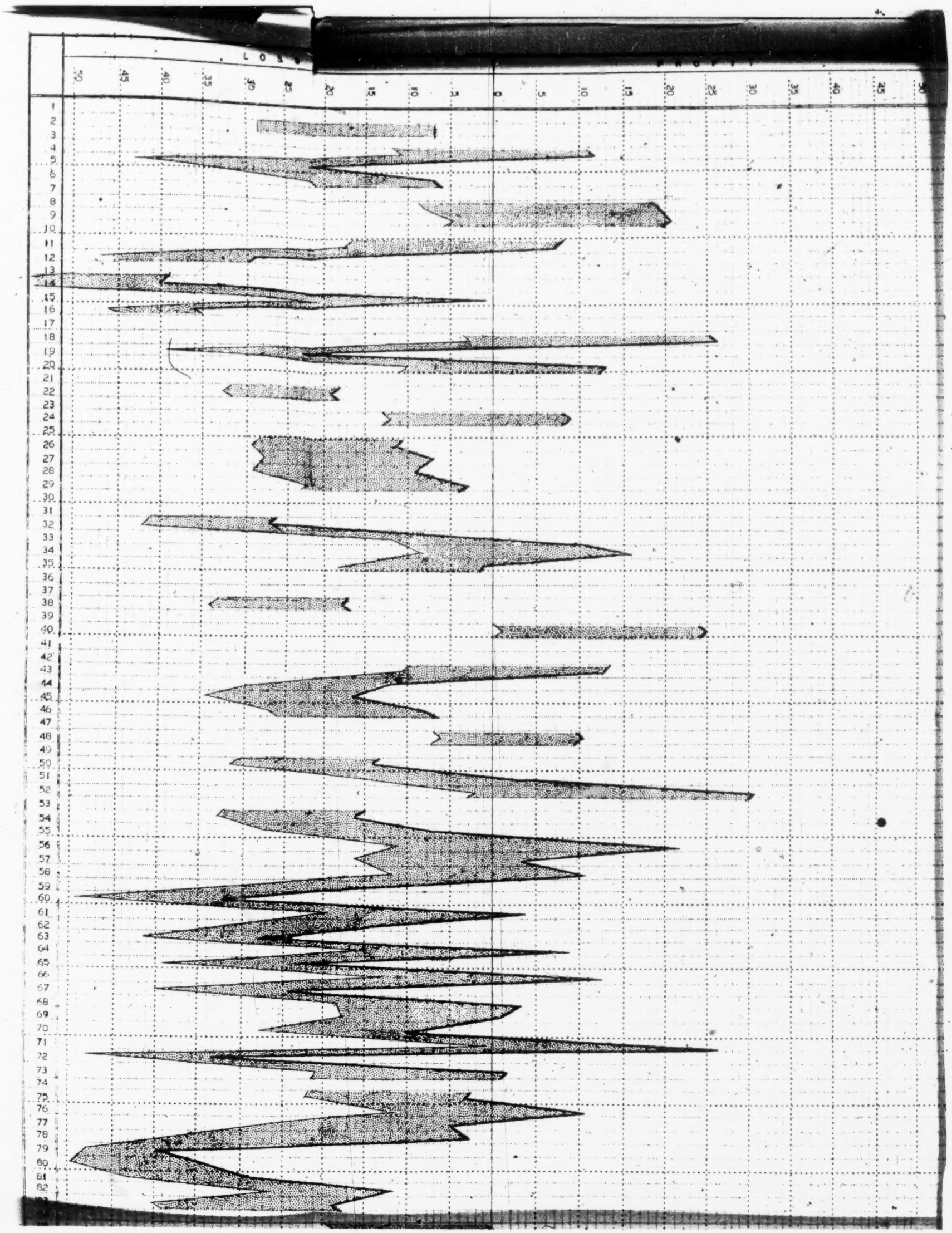
LOSS
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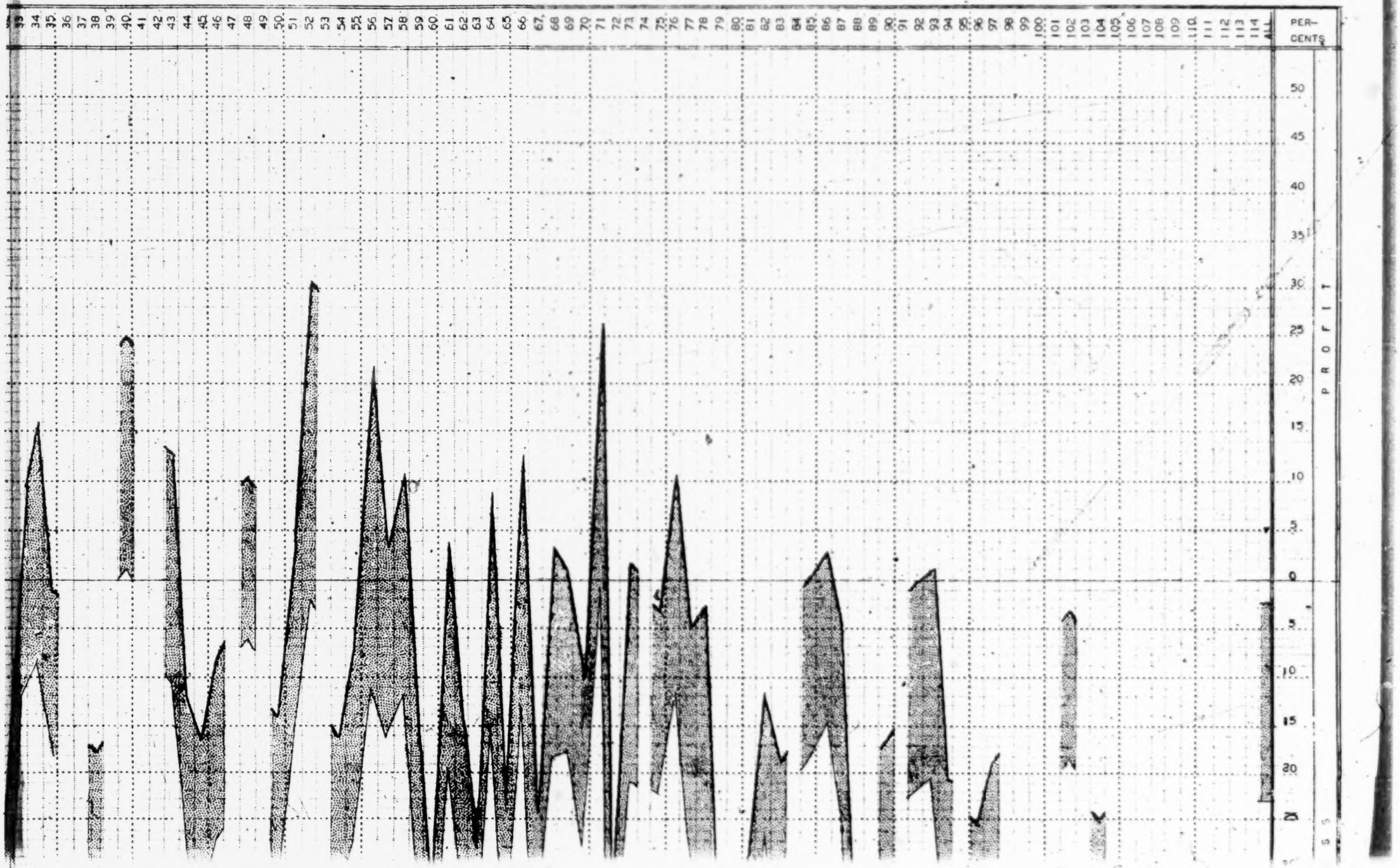
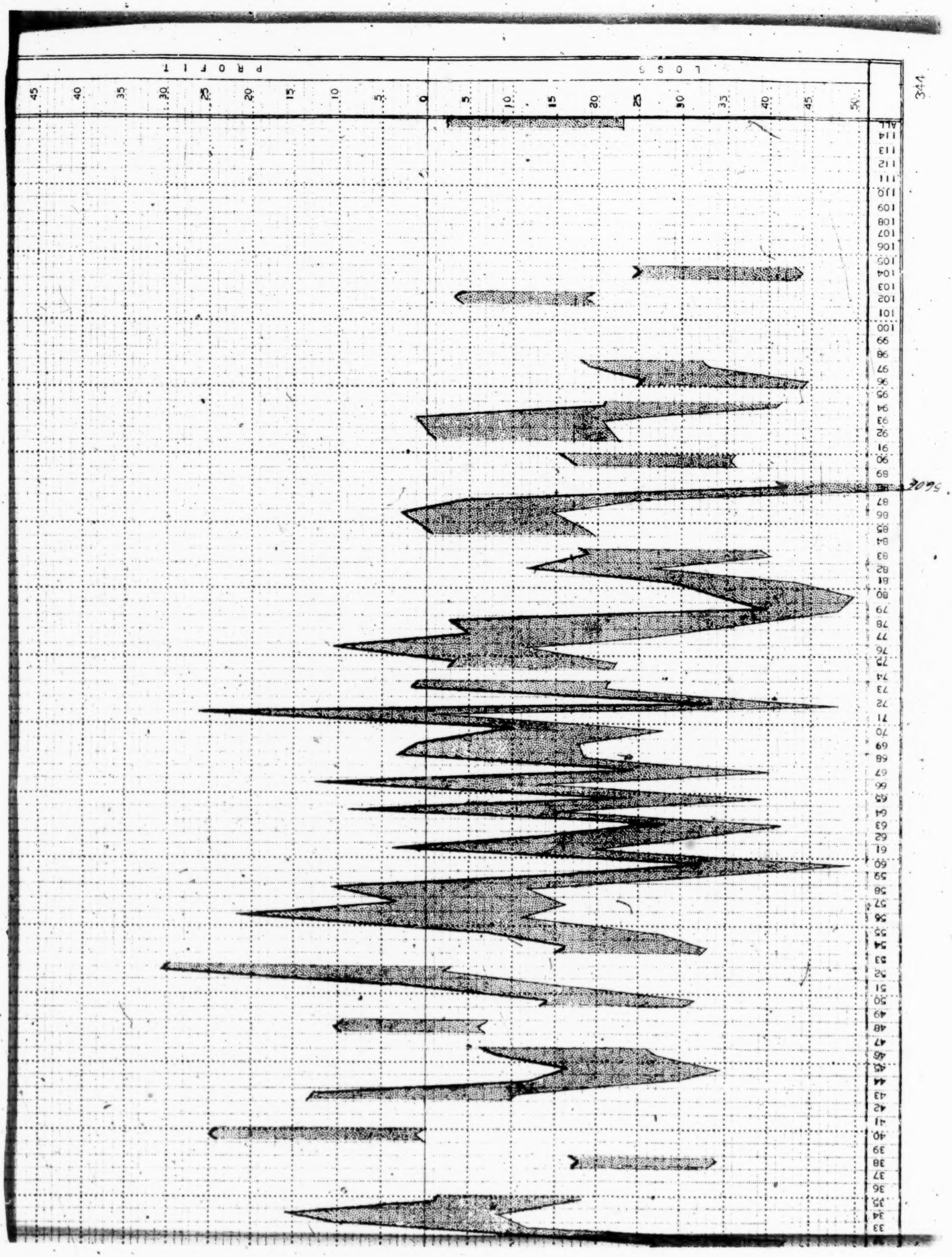
PERCENT OF PROFIT OR LOSS UNDER PRESENT RATES - INCLUDING SALARY APPRAISAL ADJUSTMENTS
as compared with
THE PERCENT OF PROFIT OR LOSS UNDER THE SECRETARY'S RATES
FOR THE FIRST FOUR MONTHS OF 1934

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)

SCHEDULE NO. 5



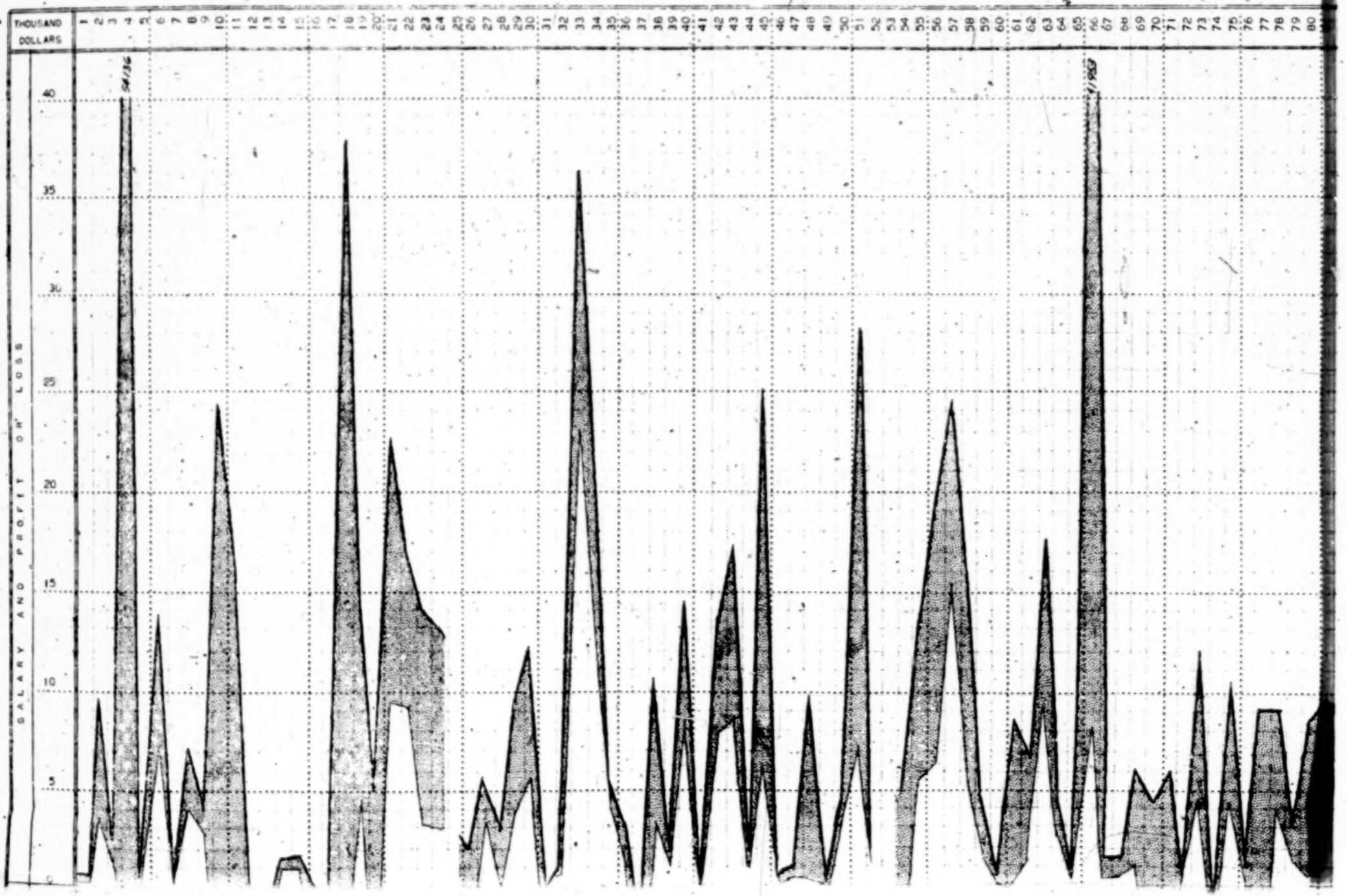

PROFIT
LOSS
344
3095

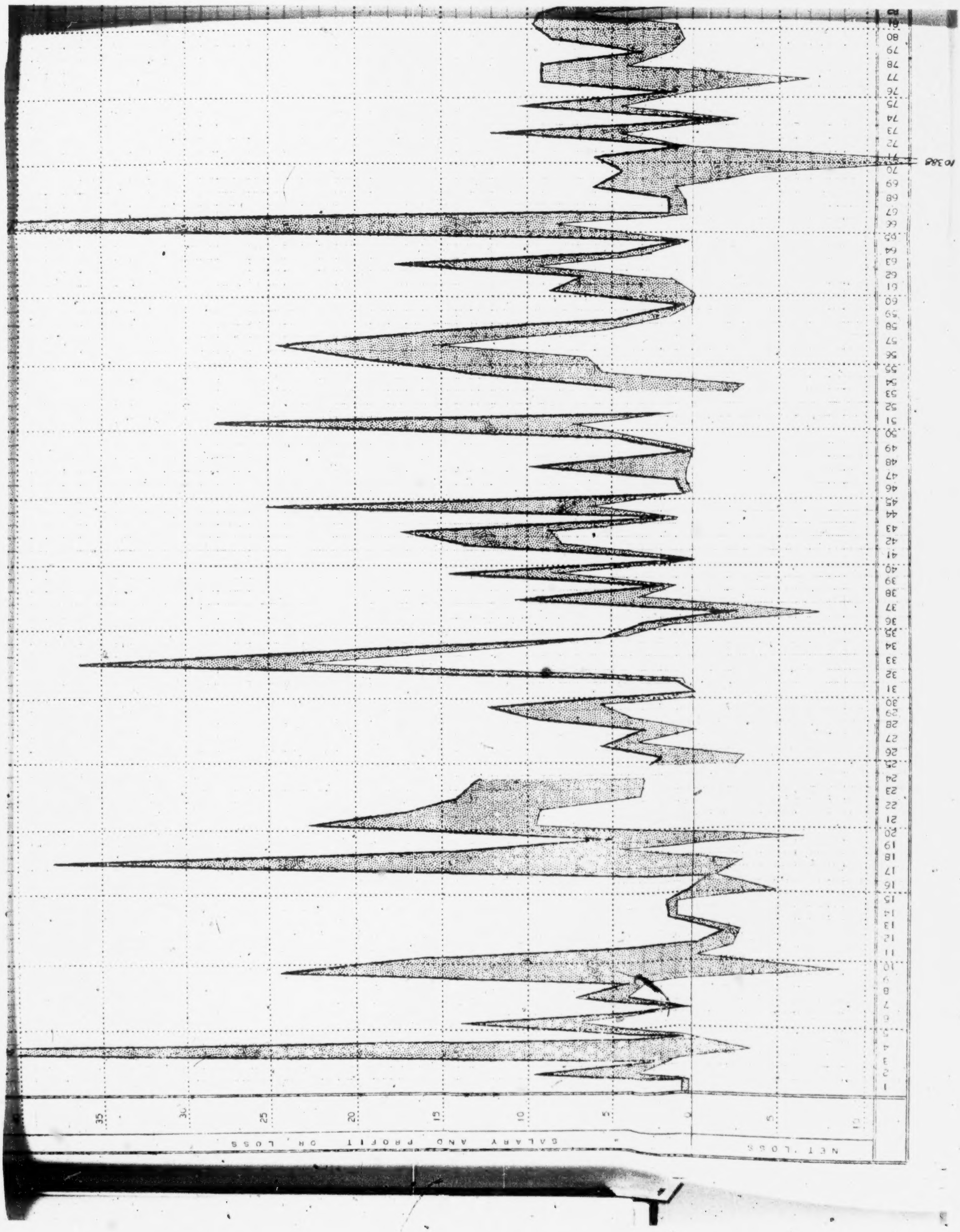
HEAVY LINE - Under present rates
LIGHT LINE - Under secretary's rates
DEUCE AREA - Effect of rate reductions

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. M3,829

OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER PRESENT RATES
as compared with
OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER SECRETARY'S RATES
FOR THE YEAR 1932

(Firm numbers are shown across top and bottom. Supporting figures are shown on Sched




SALARY AND PROFIT ON LOSS
NET LOSS

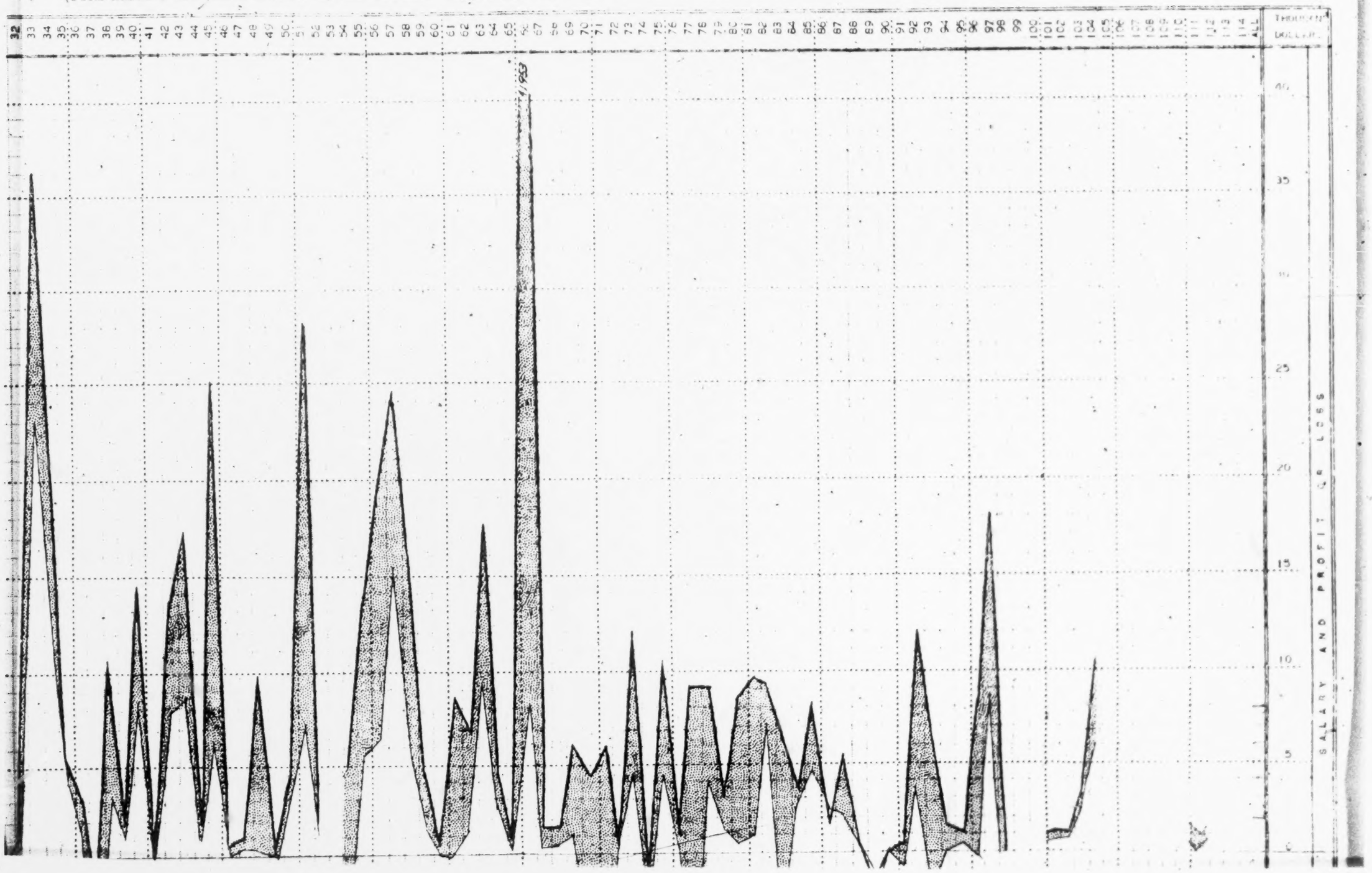
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 14,829

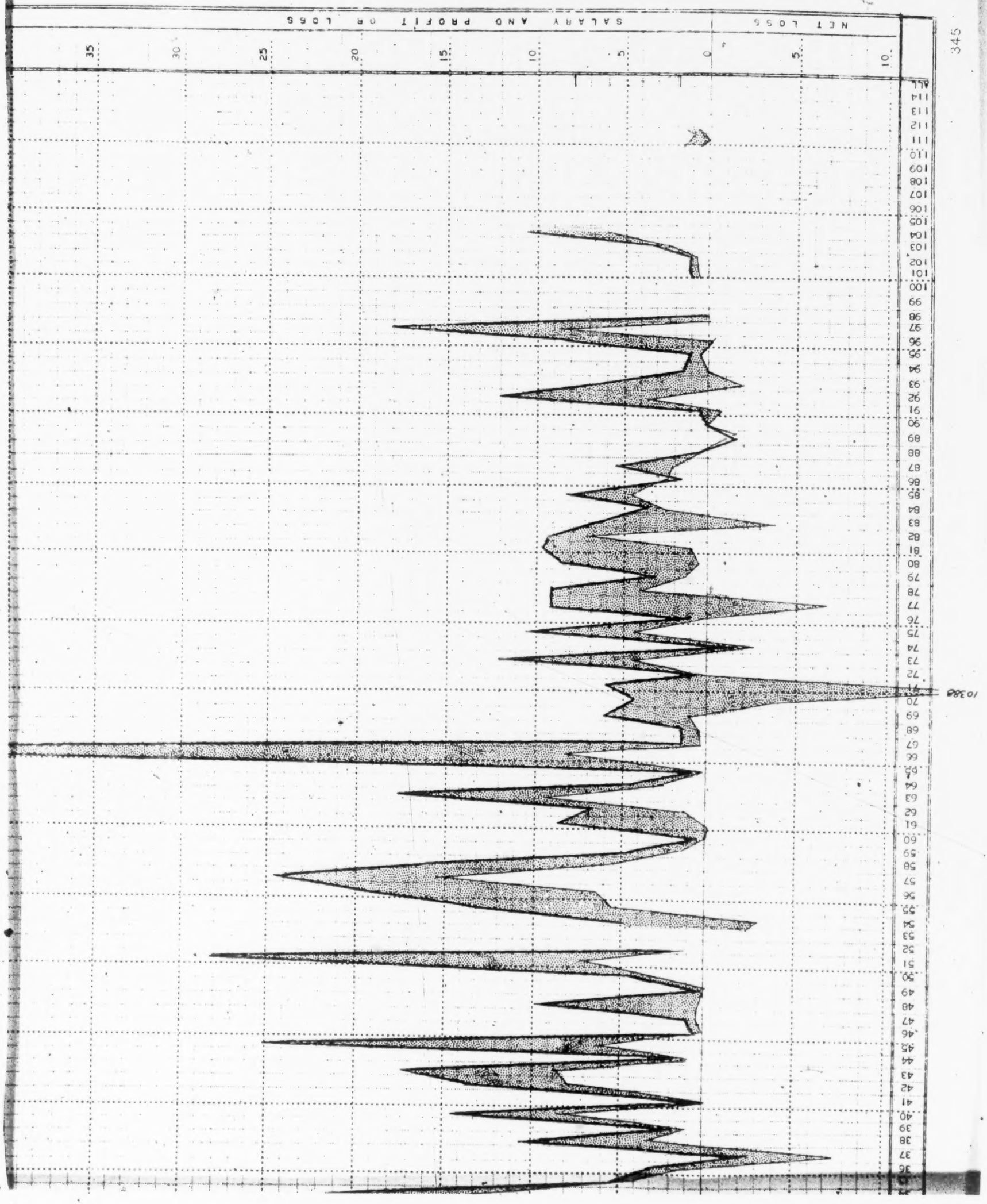
Petitioners' Exhibit No. ___
Witness, Earle D. Mudd.
Sheet 1 of 1

OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER PRESENT RATES
as compared with
OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER SECRETARY'S RATES
FOR THE YEAR 1932

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No.7)

SCHEDULE NO. 6

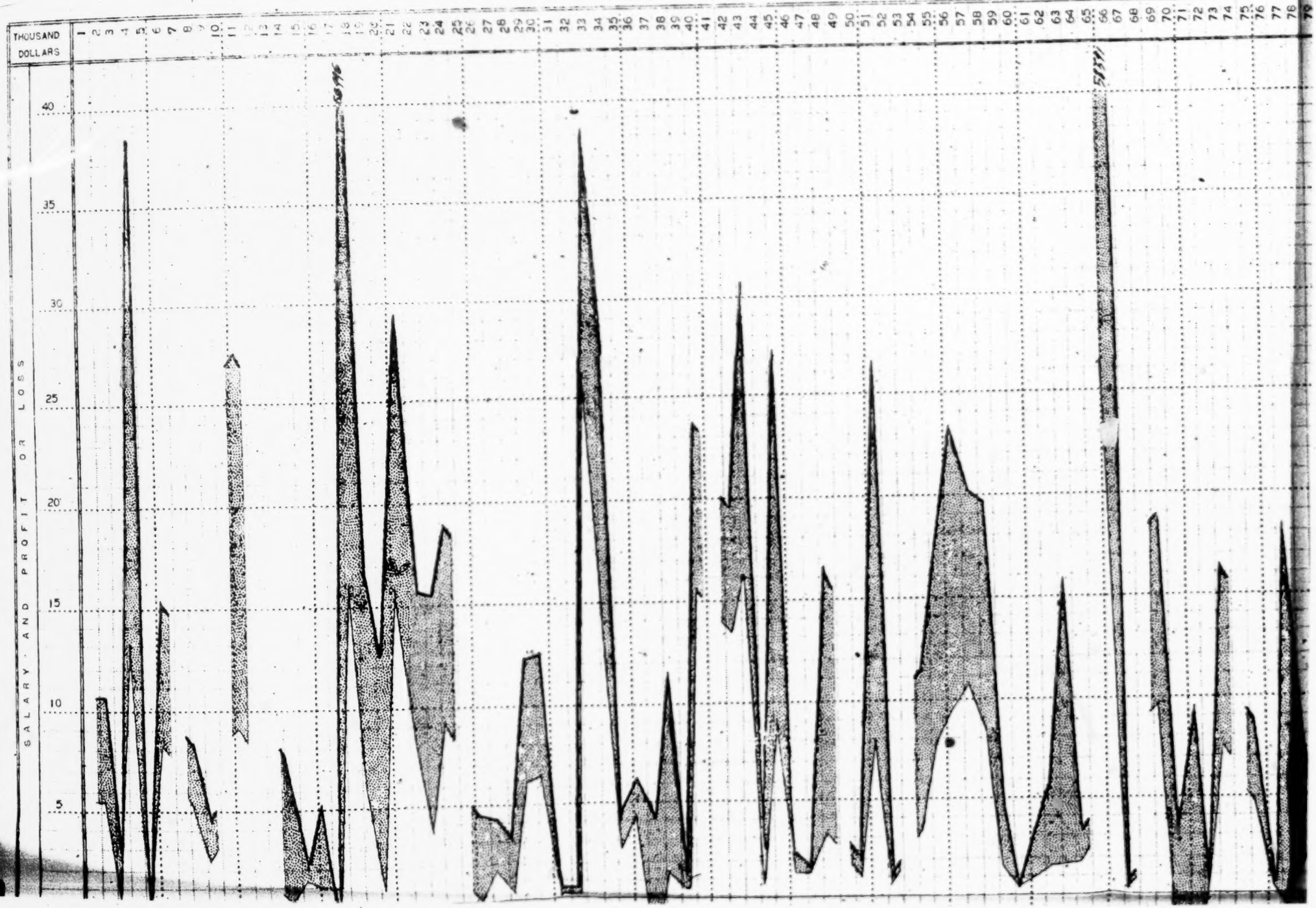


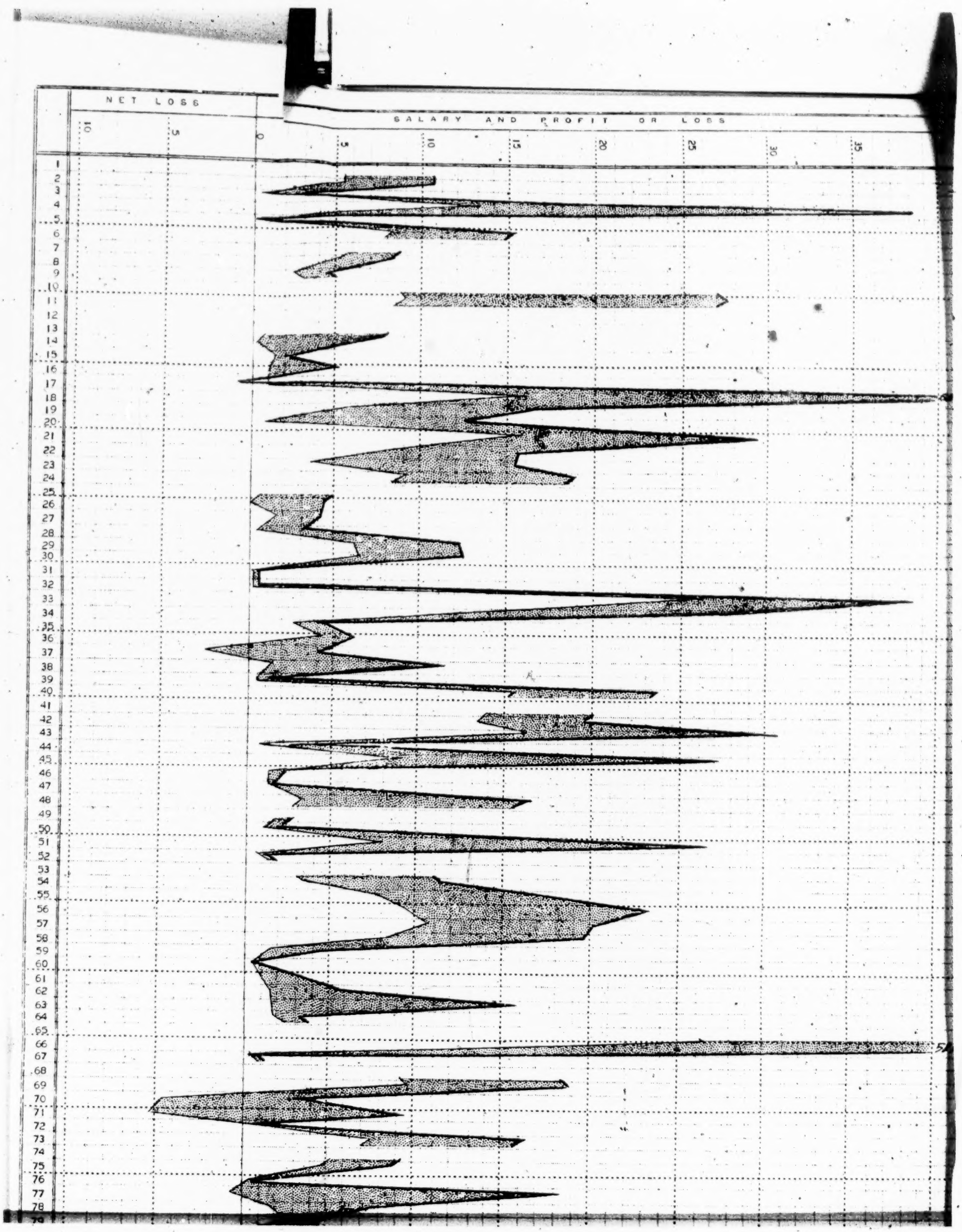

NET LOSS
SALARY AND PROFIT OR LOSS
10
5
0
5
10
15
20
25
30
35
1038

HEAVY LINE - Under present rates
LIGHT LINE - Under Secretary's rates
DENSE AREA - Effect of rate reductions

OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER PRESENT RATES
as compared with
OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER SECRETARY'S RATES
FOR THE YEAR 1933

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule

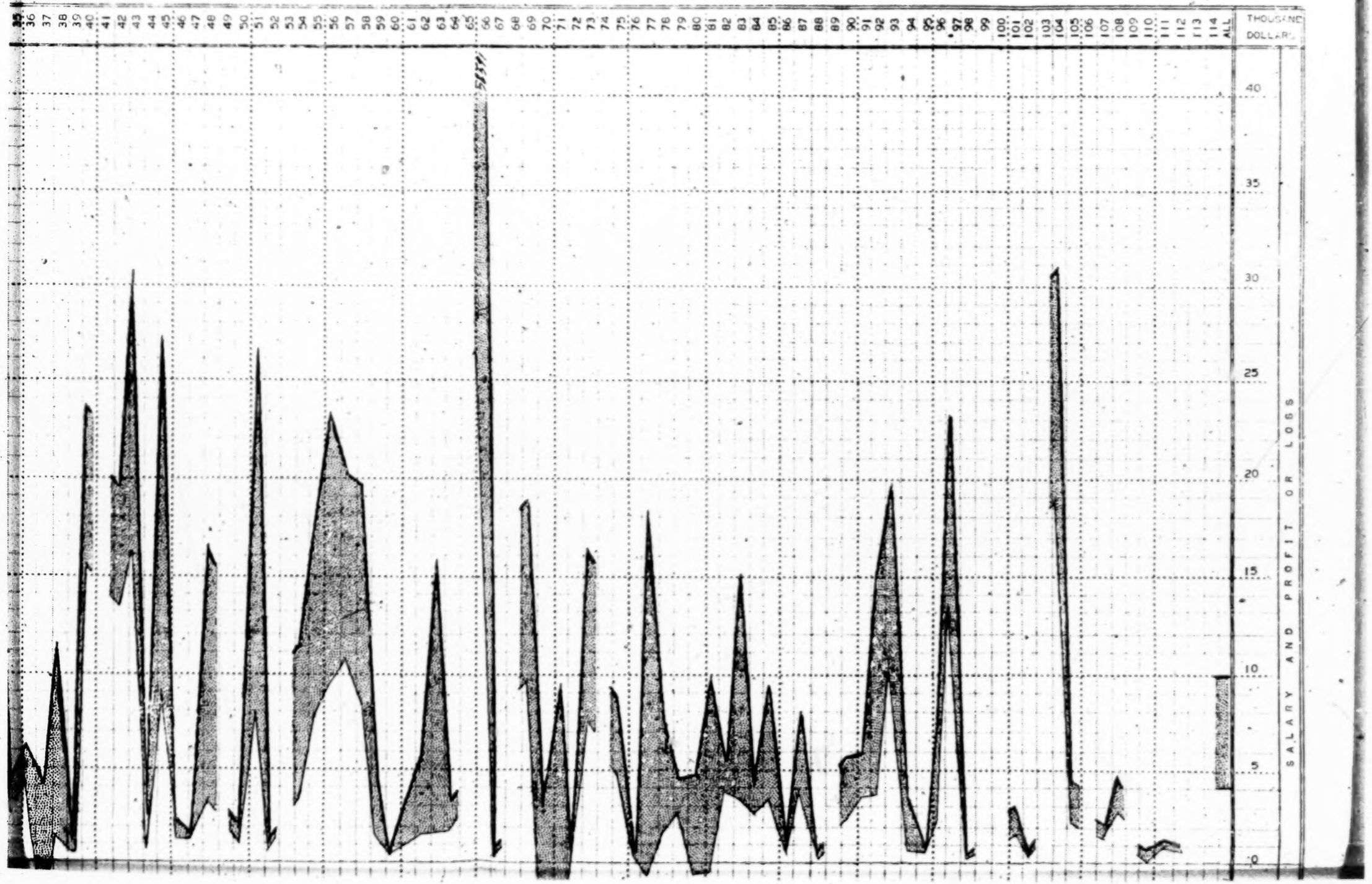


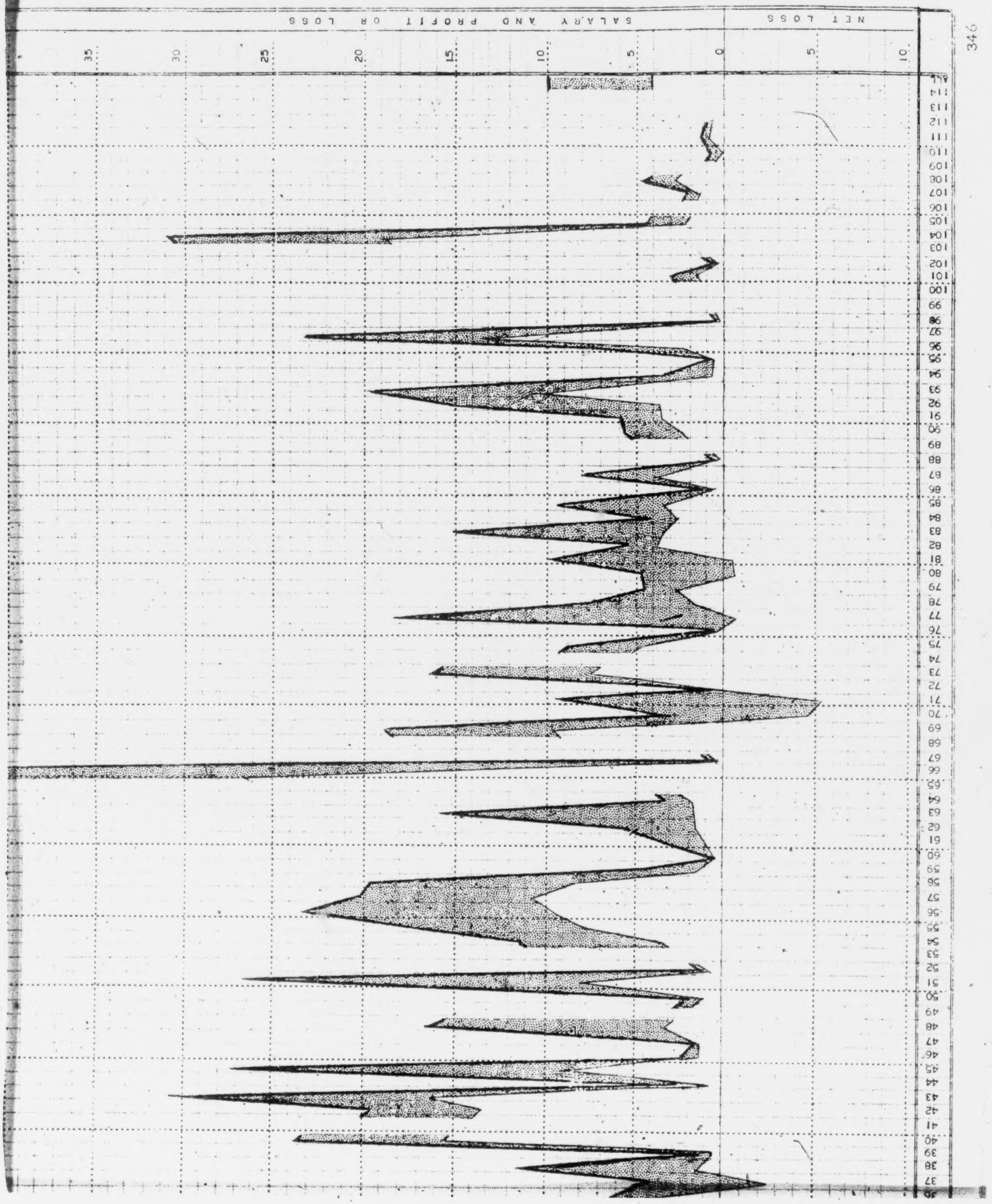

NET LOSS
10
5
0
SALARY AND PROFIT OR LOSS
5
10
15
20
25
30
35

OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER PRESENT RATES
as compared with
OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER SECRETARY'S RATES
FOR THE YEAR 1933

numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7).

SCHEDULE NO. 6

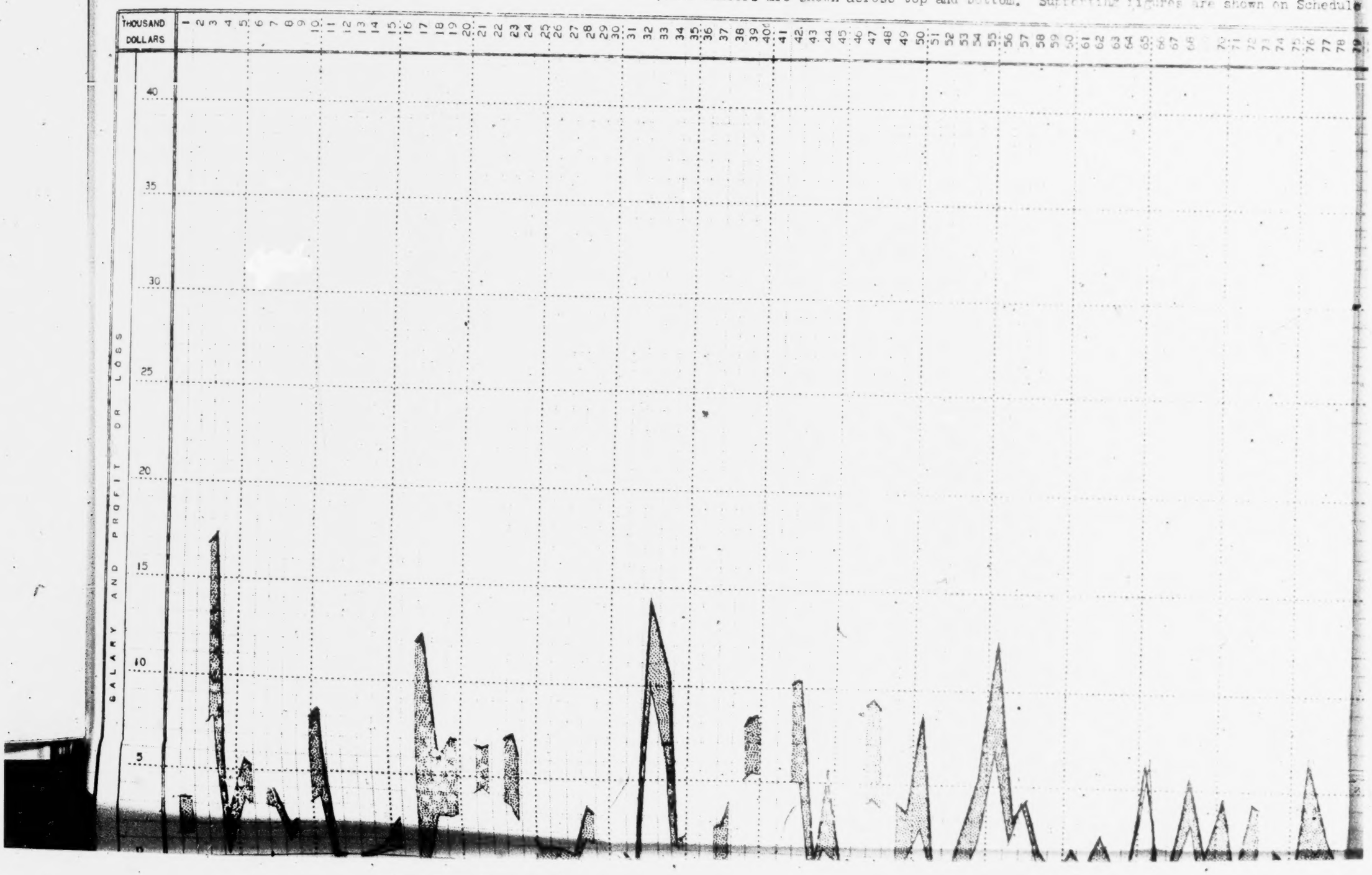


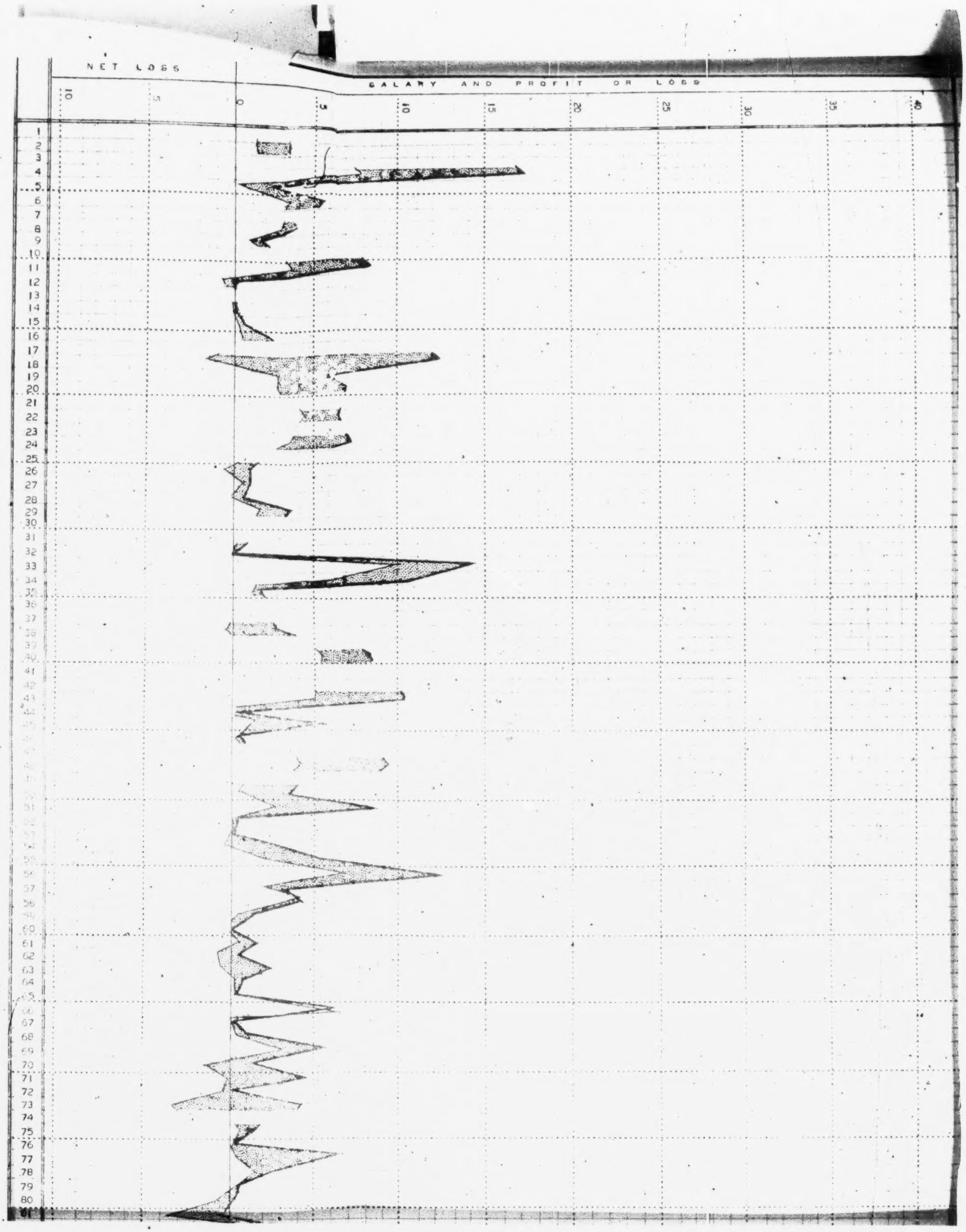

SALARY AND PROFIT OR LOSS
NET LOSS
35
30
25
20
15
10
5
0
5
10

HEAVY LINE - Under present rates
LIGHT LINE - Under Secretary's rates
DENSE AREA - Effect of rate reductions

OWNERS' SALARIES PLUS PROFIT (OR LE[illegible] RATES
as compared [illegible]
OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) [illegible] SECRETARY'S RATES
FOR THE FIRST FOUR MONTHS OF 1934

(Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule

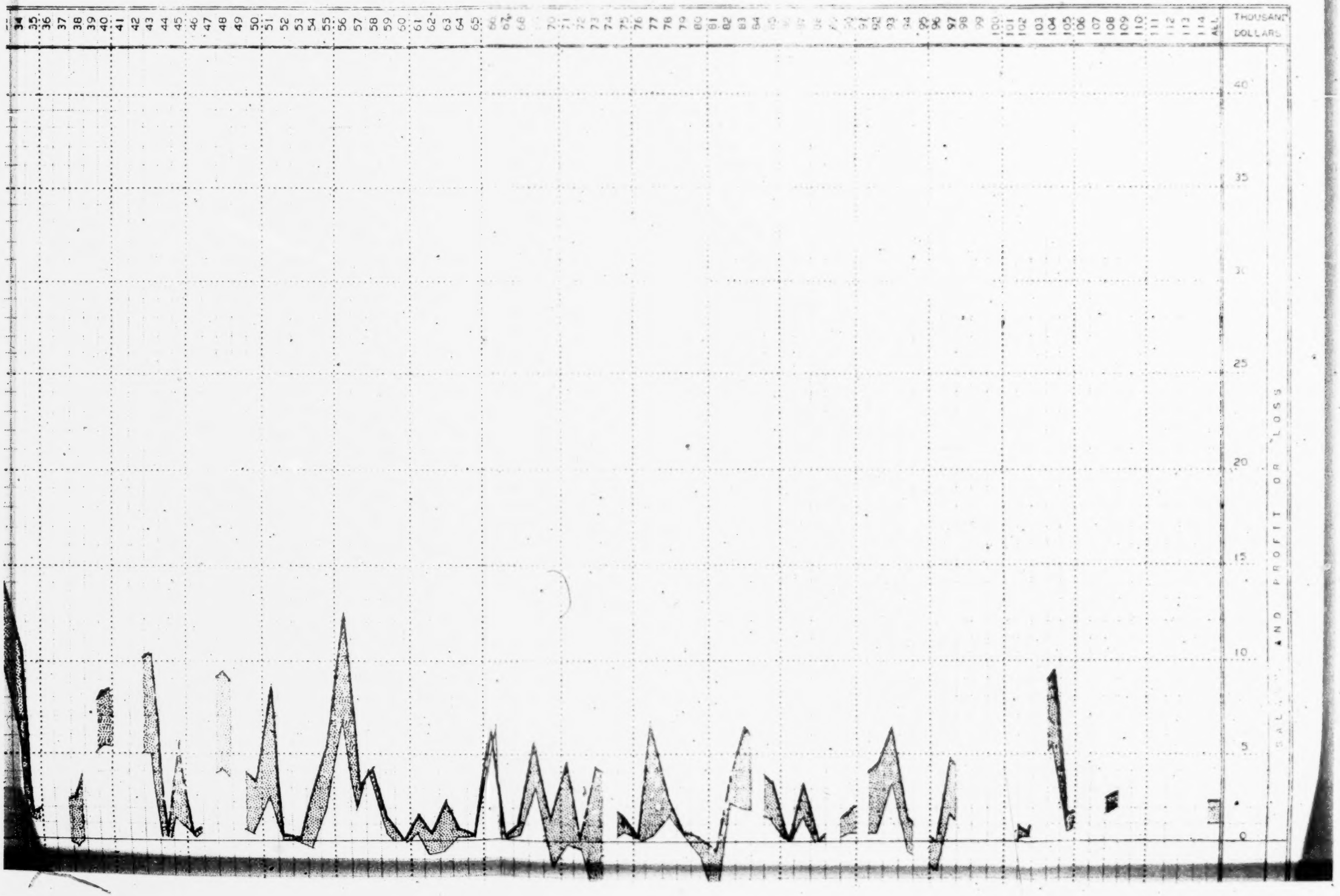


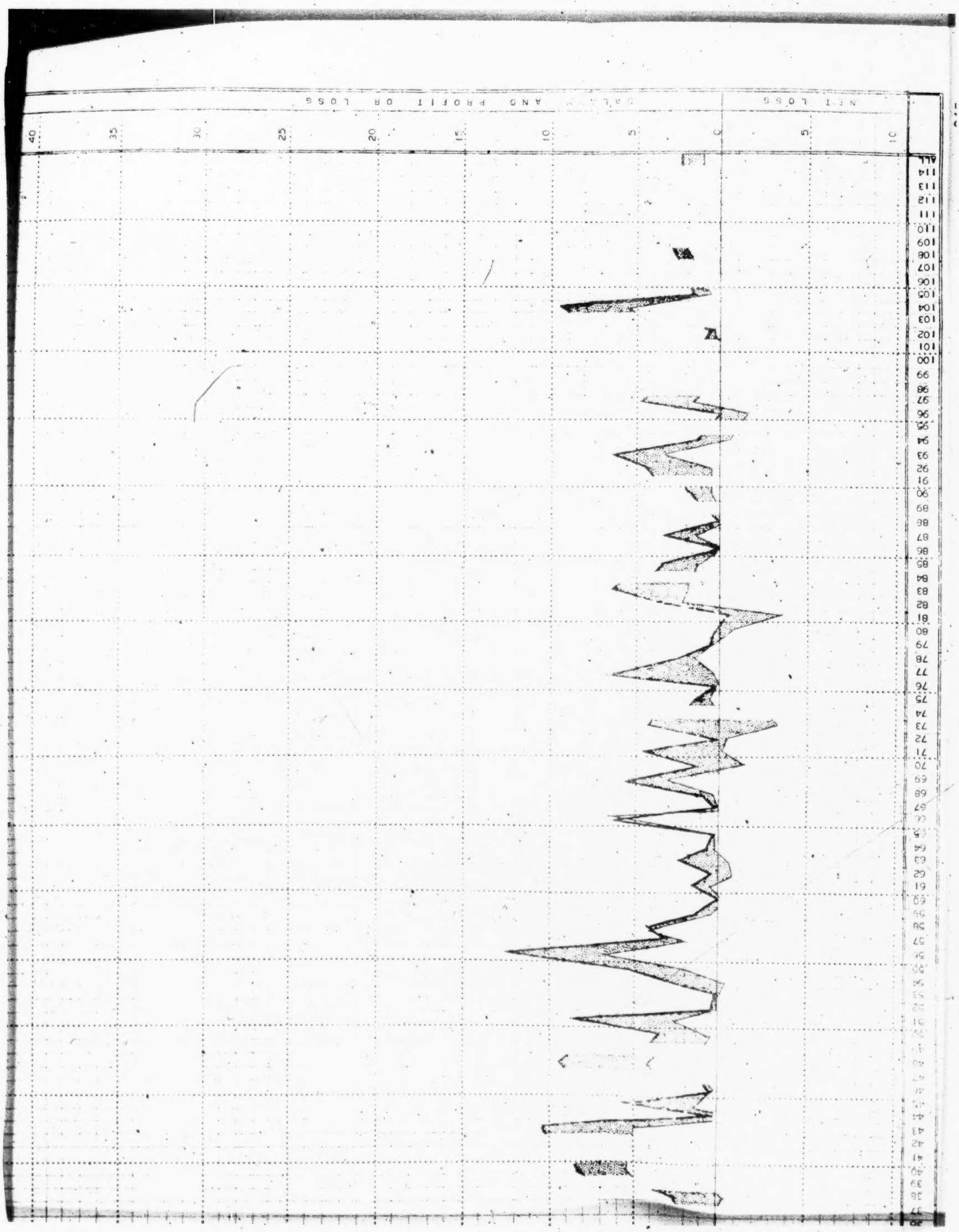

NET LOSS
SALARY AND PROFIT OR LOSS
10
5
0
5
10
15
20
25
30
35
40

OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER PERCENT RATES
as compared with
OWNERS' SALARIES PLUS PROFIT (OR LESS LOSS) UNDER SECRETARY'S RATES
FOR THE FIRST FOUR MONTHS OF 1934

Firm numbers are shown across top and bottom. Supporting figures are shown on Schedule No. 7)

SCHEDULE NO. 6




GAIN AND PROFIT OR LOSS
NET LOSS
40
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10
ALL
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113
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111
110
109
108
107
106
105
104
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Petitioners' Exhibit No. 8

INCLUDES "SELLING" SERVICE, ONLY.

COMPARISON OF COSTS OF OPERATIONS, WITH ACTUAL COMMISSIONS, AND WITH COMMISSIONS AS PER SECRETARY'S ORDER, SHOWING PE

ALL CHICAGO LIVE STOCK EXCHANVE FIRMS - FOR THE YEAR 1932

	SIZE OF CONSIGNMENT	NO. OF HEAD		ACTUAL COST		COMMISSIONS						
						ACTUAL		SECRETARY'S ORDER		INCREASE OR DECREASE		
		NO.	%	TOTAL COSTS	PER HEAD	TOTAL	PER HEAD	TOTAL	PER HEAD	TOTAL	PER HEAD	%
CATTLE	1 TO 5 HEAD	113 719	5.51	148 690	1.3075	100 251	.8816	80 389	.7069	19 862	.1747	19.81
	6 TO 10 "	94 318	4.57	114 641	1.2155	83 119	.8813	60 500	.6414	22 619	.2399	27.21
	11 TO 15 "	87 715	4.25	99 530	1.1347	86 609	.9874	56 332	.6422	30 277	.3452	34.96
	16 TO 20 "	141 374	6.85	147 482	1.0432	127 376	.9010	88 012	.6226	39 364	.2784	30.90
	21 TO 30 "	588 200	28.50	528 677	.8988	475 398	.8082	353 952	.6017	121 446	.2065	25.55
	31 & UP	1 038 535	50.32	811 955	.7818	713 494	.6870	551 769	.5313	161 725	.1557	22.67
	TOTAL	2 063 861	100.00	1 850 975	.8969	1 586 247	.7686	1 190 954	.5771	395 293	.1915	24.92
CALVES	1 TO 5 HEAD	72 764	20.40	44 325	.6092	28 537	.3922	24 971	.3432	3 566	.0490	12.50
	6 TO 10 "	35 562	9.97	20 148	.5666	13 950	.3923	10 456	.2940	3 494	.0983	25.05
	11 TO 15 "	26 859	7.53	14 305	.5326	10 542	.3925	7 907	.2944	2 635	.0981	24.99
	16 TO 20 "	21 758	6.10	10 678	.4908	8 544	.3927	6 233	.2865	2 311	.1062	27.05
	21 TO 30 "	35 562	9.97	14 708	.4136	13 950	.3923	9 196	.2586	4 754	.1337	34.08
	31 & UP "	164 182	46.03	59 637	.3632	47 057	.2866	37 426	.2280	9 631	.0586	20.47
	TOTAL	356 687	100.00	163 801	.4592	122 580	.3437	96 189	.2697	26 391	.0740	21.53
HOGS	1 TO 10 HEAD	189 220	4.96	92 699	.4899	56 475	.2985	46 345	.2449	10 130	.0536	17.94
	11 TO 20 "	214 398	5.62	73 496	.3428	63 911	.2981	51 125	.2385	12 786	.0596	20.01
	21 TO 30 "	183 498	4.81	56 279	.3067	54 616	.2976	42 887	.2337	11 729	.0639	21.48
	31 TO 50 "	317 020	8.31	79 065	.2494	92 856	.2929	64 519	.2035	28 337	.0894	30.52
	51 TO 70 "	603 138	15.81	135 585	.2248	140 568	.2331	104 072	.1726	36 496	.0605	25.96
	71 & UP "	2 307 643	60.49	450 465	.1952	476 762	.2066	319 890	.1386	156 872	.0680	32.90
	TOTAL	3 814 917	100.00	887 589	.2327	885 188	.2320	628 838	.1648	256 350	.0672	28.96
SHEEP	1 TO 10 HEAD	38 496	1.60	11 633	.3022	7 441	.1933	9 491	.2465	2 050	.0532	27.55
	11 TO 20 "	44 992	1.87	9 241	.2054	8 754	.1946	9 472	.2105	718	.0159	8.20
	21 TO 40 "	68 571	2.85	11 367	.1659	13 337	.1945	12 307	.1795	1 030	.0150	7.72
	41 TO 60 "	48 361	2.01	7 143	.1477	9 399	.1944	7 959	.1646	1 440	.0298	15.32
	61 TO 100 "	86 857	3.61	11 344	.1306	14 858	.1711	11 816	.1360	3 042	.0351	20.47
	101 & UP "	2 218 728	88.06	169 815	.0801	176 568	.0833	138 009	.0651	38 559	.0182	21.84
	TOTAL	2 406 005	100.00	220 543	.0917	230 357	.0957	189 054	.0786	41 303	.0171	17.93
ALL SPECIES		8 641 470		3 122 908	.3614	2 824 372	.3268	2 105 035	.2436	719 337	.0832	25.47

NOTE NO. 1: THE CLASSIFICATION OF VOLUME AS BETWEEN THE VARIOUS SIZES OF CONSIGNMENTS IS THE RESULT OF AN ACTUAL ANALYSIS.

	SIZE OF CONSIGNMENT	NO. OF HEAD		ACTUAL COST		COMMISSIONS						
						ACTUAL		SECRETARY'S ORDER		INCREASE OR DECREASE		
		NO.	%	TOTAL COSTS	PER HEAD	TOTAL	PER HEAD	TOTAL	PER HEAD	TOTAL	PER HEAD	%
CATTLE	1 TO 5 HEAD	113 719	5.51	148 690	1.3075	100 251	.8816	80 389	.7069	19 862	.1747	19.81
	6 TO 10 "	94 318	4.57	114 641	1.2155	83 119	.8813	60 500	.6414	22 619	.2399	27.21
	11 TO 15 "	87 715	4.25	99 530	1.1347	86 609	.9874	56 332	.6422	30 277	.3452	34.96
	16 TO 20 "	141 374	6.85	147 482	1.0432	127 376	.9010	88 012	.6226	39 364	.2784	30.90
	21 TO 30 "	588 200	28.50	528 677	.8988	475 398	.8082	353 952	.6017	121 446	.2065	25.55
	31 & UP	1 038 535	50.32	811 955	.7818	713 494	.6870	551 769	.5313	161 725	.1557	22.67
	TOTAL	2 063 861	100.00	1 850 975	.8969	1 586 247	.7686	1 190 954	.5771	395 293	.1915	24.92
CALVES	1 TO 5 HEAD	72 764	20.40	44 325	.6092	28 537	.3922	24 971	.3432	3 566	.0490	12.50
	6 TO 10 "	35 562	9.97	20 148	.5666	13 950	.3923	10 456	.2940	3 494	.0983	25.05
	11 TO 15 "	26 859	7.53	14 305	.5326	10 542	.3925	7 907	.2944	2 635	.0981	24.99
	16 TO 20 "	21 758	6.10	10 678	.4908	8 544	.3927	6 233	.2865	2 311	.1062	27.05
	21 TO 30 "	35 562	9.97	14 708	.4136	13 950	.3923	9 196	.2586	4 754	.1337	34.08
	31 & UP "	164 182	46.03	59 637	.3632	47 057	.2866	37 426	.2280	9 631	.0586	20.47
	TOTAL	356 687	100.00	163 801	.4592	122 580	.3437	96 189	.2697	26 391	.0740	21.53
HOGS	1 TO 10 HEAD	189 220	4.96	92 699	.4899	56 475	.2985	46 345	.2449	10 130	.0536	17.94
	11 TO 20 "	214 398	5.62	73 496	.3428	63 911	.2981	51 125	.2385	12 786	.0596	20.01
	21 TO 30 "	183 498	4.81	56 279	.3067	54 616	.2976	42 887	.2337	11 729	.0639	21.48
	31 TO 50 "	317 020	8.31	79 065	.2494	92 856	.2929	64 519	.2035	28 337	.0894	30.52
	51 TO 70 "	603 138	15.81	135 585	.2248	140 568	.2331	104 072	.1726	36 496	.0605	25.96
	71 & UP "	2 307 643	60.49	450 465	.1952	476 762	.2066	319 890	.1386	156 872	.0680	32.90
	TOTAL	3 814 917	100.00	887 589	.2327	885 188	.2320	628 838	.1648	256 350	.0672	28.96
SHEEP	1 TO 10 HEAD	38 496	1.60	11 633	.3022	7 441	.1933	9 491	.2465	2 050	.0532	27.55
	11 TO 20 "	44 992	1.87	9 241	.2054	8 754	.1946	9 472	.2105	718	.0159	8.20
	21 TO 40 "	68 571	2.85	11 367	.1659	13 337	.1945	12 307	.1795	1 030	.0150	7.72
	41 TO 60 "	48 361	2.01	7 143	.1477	9 399	.1944	7 959	.1646	1 440	.0298	15.32
	61 TO 100 "	86 857	3.61	11 344	.1306	14 858	.1711	11 816	.1360	3 042	.0351	20.47
	101 & UP "	2 218 728	88.06	169 815	.0801	176 568	.0833	138 009	.0651	38 559	.0182	21.84
	TOTAL	2 406 005	100.00	220 543	.0917	230 357	.0957	189 054	.0786	41 303	.0171	17.93
ALL SPECIES		8 641 470		3 122 908	.3614	2.824 372	.3268	2 105 035	.2436	719 337	.0832	25.47

NOTE NO. 1: THE CLASSIFICATION OF VOLUME AS BETWEEN THE VARIOUS SIZES OF CONSIGNMENTS IS THE RESULT OF AN ACTUAL ANALYSIS.

NOTE NO. 2: THE CLASSIFICATION OF ACTUAL COMMISSIONS AND THOSE UNDER THE SECRETARY'S ORDER AS BETWEEN THE VARIOUS SIZES OF CONSIGNMENTS ARE BO
RATES TO THE VOLUME ANALYSIS.

NOTE NO. 3: THE CLASSIFICATION OF COSTS AS BETWEEN THE VARIOUS SIZES OF CONSIGNMENTS IS A RESULT OF SPECIAL TIME-STUDIES AND COST STUDIES MADE

NOTE NO. 4: THE SEPARATION OF COSTS AS BETWEEN CATTLE AND CALVES, WHICH WERE ORIGINALLY COMBINED BECAUSE THESE TWO SPECIES ARE HANDLED IN THE
WAS MADE ACCORDING TO THE SAME RELATIONSHIP RECOGNIZED BY THE SECRETARY WHEN HE BASED THE PRESCRIBED COMMISSION RATES ON HIS SO-CA

Petitioners' Exhibit No. 8

PREPARED BY – E. D. MUDD, CONSULTING ACCOUNTANT,
FOR THE CHICAGO LIVE STOCK EXCHANGE.

WITH ACTUAL COMMISSIONS, AND WITH COMMISSIONS AS PER SECRETARY'S ORDER, SHOWING PROFITS OR LOSSES UNDER BOTH.

ALL CHICAGO LIVE STOCK EXCHANVE FIRMS - FOR THE YEAR 1932

L COST		COMMISSIONS							PROFITS OR LOSSES					
		ACTUAL		SECRETARY'S ORDER		INCREASE OR DECREASE			ACTUAL			SECRETARY'S ORDER		
	PER HEAD	TOTAL	PER HEAD	TOTAL	PER HEAD	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%	TOTAL	PER HEAD	%
590	1.3075	100 251	.8816	80 389	.7069	19 862	.1747	19.81	48 439	.4260	32.58	68 301	.6006	45.94
541	1.2155	83 119	.8813	60 500	.6414	22 619	.2399	27.21	31 522	.3342	27.50	54 141	.5740	47.23
530	1.1347	86 609	.9874	56 332	.6422	30 277	.3452	34.96	12 921	.1473	12.98	43 198	.4925	43.40
482	1.0432	127 376	.9010	88 012	.6226	39 364	.2784	30.90	20 106	.1422	13.63	59 470	.4207	40.32
577	.8988	475 398	.8082	353 952	.6017	121 446	.2065	25.55	53 279	.0906	10.08	174 725	.2971	33.05
385	.7818	713 494	.6870	551 769	.5313	161 725	.1557	22.67	98 461	.0948	12.13	260 186	.2505	32.04
975	.8969	1 586 247	.7686	1 190 954	.5771	395 293	.1915	24.92	264 728	.1283	14.30	660 021	.3198	35.66
325	.6092	28 537	.3922	24 971	.3432	3 566	.0490	12.50	15 788	.2170	35.62	19 354	.2660	43.66
148	.5666	13 950	.3923	10 456	.2940	3 494	.0983	25.05	6 198	.1743	30.76	9 692	.2725	48.10
305	.5326	10 542	.3925	7 907	.2944	2 635	.0981	24.99	3 763	.1401	26.31	6 398	.2382	44.73
678	.4908	8 544	.3927	6 233	.2865	2 311	.1062	27.05	2 134	.0981	19.99	4 445	.2043	41.63
708	.4136	13 950	.3923	9 196	.2586	4 754	.1337	34.08	758	.0213	5.15	5 512	.1550	37.48
687	.3632	47 057	.2866	37 426	.2280	9 631	.0586	20.47	12 580	.0766	21.09	22 211	.1353	37.24
801	.4592	122 580	.3437	96 189	.2697	26 391	.0740	21.53	41 221	.1156	25.17	67 612	.1896	41.28
699	.4899	56 475	.2985	46 345	.2449	10 130	.0536	17.94	36 224	.1914	39.08	46 354	.2450	50.00
496	.3428	63 911	.2981	51 125	.2385	12 786	.0596	20.01	9 585	.0447	13.04	22 371	.1043	30.44
279	.3067	54 616	.2976	42 887	.2337	11 729	.0639	21.48	1 663	.0091	2.95	13 392	.0730	23.80
065	.2494	92 856	.2929	64 519	.2035	28 337	.0894	30.52	13 791	.0435	17.44	14 546	.0459	18.40
585	.2248	140 568	.2331	104 072	.1726	36 496	.0605	25.96	4 983	.0083	3.68	31 513	.0522	23.24
465	.1952	476 762	.2066	319 890	.1386	156 872	.0680	32.90	26 297	.0114	5.84	130 575	.0566	28.99
589	.2327	885 188	.2320	628 838	.1648	256 350	.0672	28.96	2 401	.0006	.27	258 751	.0678	29.15
683	.3022	7 441	.1933	9 491	.2465	2 050	.0532	27.55	4 192	.1089	36.04	2 142	.0556	18.41
241	.2054	8 754	.1946	9 472	.2105	718	.0159	8.20	487	.0108	5.27	231	.0051	2.50
367	.1659	13 337	.1945	12 307	.1795	1 030	.0150	7.72	1 970	.0287	17.33	940	.0137	8.27
143	.1477	9 399	.1944	7 959	.1646	1 440	.0298	15.32	2 256	.0466	31.58	816	.0169	11.42
344	.1306	14 858	.1711	11 816	.1360	3 042	.0351	20.47	3 514	.0405	30.98	472	.0054	4.16
815	.0801	176 568	.0833	138 009	.0651	38 559	.0182	21.84	6 753	.0032	3.98	31 806	.0150	18.73
543	.0917	230 357	.0957	189 054	.0786	41 303	.0171	17.93	9 814	.0041	4.45	31 489	.0131	14.28
908	.3614	2 824 372	.3268	2 105 035	.2436	719 337	.0832	25.47	298 536	.0345	9.56	1 017 873	.1178	32.59

BETWEEN THE VARIOUS SIZES OF CONSIGNMENTS IS THE RESULT OF AN ACTUAL ANALYSIS.

... RESULTS ARE BOTH A RESULT OF AN ACTUAL APPLICATION OF THE RESPECTIVE

COST PER HEAD	COMMISSIONS ACTUAL TOTAL	COMMISSIONS ACTUAL PER HEAD	COMMISSIONS SECRETARY'S ORDER TOTAL	COMMISSIONS SECRETARY'S ORDER PER HEAD	INCREASE OR DECREASE TOTAL	INCREASE OR DECREASE PER HEAD	INCREASE OR DECREASE %	PROFITS OR LOSSES ACTUAL TOTAL	PROFITS OR LOSSES ACTUAL PER HEAD	PROFITS OR LOSSES ACTUAL %	PROFITS OR LOSSES SECRETARY'S ORDER TOTAL	PROFITS OR LOSSES SECRETARY'S ORDER PER HEAD	PROFITS OR LOSSES SECRETARY'S ORDER %
1.3075	100 251	.8816	80 389	.7069	19 862	.1747	19.81	48 439	.4260	32.58	68 301	.6006	45.94
1.2155	83 119	.8813	60 500	.6414	22 619	.2399	27.21	31 522	.3342	27.50	54 141	.5740	47.23
1.1347	86 609	.9874	56 332	.6422	30 277	.3452	34.96	12 921	.1473	12.98	43 198	.4925	43.40
1.0432	127 376	.9010	88 012	.6226	39 364	.2784	30.90	20 106	.1422	13.63	59 470	.4207	40.32
.8988	475 398	.8082	353 952	.6017	121 446	.2065	25.55	53 279	.0906	10.08	174 725	.2971	33.05
.7818	743 494	.6870	551 769	.5313	161 725	.1557	22.67	98 461	.0948	12.13	260 186	.2505	32.04
.8969	1 586 247	.7686	1 190 954	.5771	395 293	.1915	24.92	264 728	.1283	14.30	660 021	.3198	35.66
.6092	28 537	.3922	24 971	.3432	3 566	.0490	12.50	15 788	.2170	35.62	19 354	.2660	43.66
.5666	13 950	.3923	10 456	.2940	3 494	.0983	25.05	6 198	.1743	30.76	9 692	.2725	48.10
.5326	10 542	.3925	7 907	.2944	2 635	.0981	24.99	3 763	.1401	26.31	6 398	.2382	44.73
.4908	8 544	.3927	6 233	.2865	2 311	.1062	27.05	2 134	.0981	19.99	4 445	.2043	41.63
.4136	13 950	.3923	9 196	.2586	4 754	.1337	34.08	758	.0213	5.15	5 512	.1550	37.48
.3632	47 057	.2866	37 426	.2280	9 631	.0586	20.47	12 580	.0766	21.09	22 211	.1353	37.24
.4592	122 580	.3437	96 189	.2697	26 391	.0740	21.53	41 221	.1156	25.17	67 612	.1896	41.28
.4899	56 475	.2985	46 345	.2449	10 130	.0536	17.94	36 224	.1914	39.08	46 354	.2450	50.00
.3428	63 911	.2981	51 125	.2385	12 786	.0596	20.01	9 585	.0447	13.04	22 371	.1043	30.44
.3067	54 616	.2976	42 887	.2337	11 729	.0639	21.48	1 663	.0091	2.95	13 392	.0730	23.80
.2494	92 856	.2929	64 519	.2035	28 337	.0894	30.52	13 791	.0435	17.44	14 546	.0459	18.40
.2248	140 568	.2331	104 072	.1726	36 496	.0605	25.96	4 983	.0083	3.68	31 513	.0522	23.24
.1952	476 762	.2066	319 890	.1386	156 872	.0680	32.90	26 297	.0114	5.84	130 575	.0566	28.99
.2327	885 188	.2320	628 838	.1648	256 350	.0672	28.96	2 401	.0006	.27	258 751	.0678	29.15
.3022	7 441	.1933	9 491	.2465	2 050	.0532	27.55	4 192	.1089	36.04	2 142	.0556	18.41
.2054	8 754	.1946	9 472	.2105	718	.0159	8.20	487	.0108	5.27	231	.0051	2.50
.1659	13 337	.1945	12 307	.1795	1 030	.0150	7.72	1 970	.0287	17.33	940	.0137	8.27
.1477	9 399	.1944	7 959	.1646	1 440	.0298	15.32	2 256	.0466	31.58	816	.0169	11.42
.1306	14 858	.1711	11 816	.1360	3 042	.0351	20.47	3 514	.0405	30.98	472	.0054	4.16
.0801	176 568	.0833	138 009	.0651	38 559	.0182	21.84	6 753	.0032	3.98	31 806	.0150	18.73
.0917	230 357	.0957	189 054	.0786	41 303	.0171	17.93	9 814	.0041	4.45	31 489	.0131	14.28
.3614	2 824 372	.3268	2 105 035	.2436	719 337	.0832	25.47	298 536	.0345	9.56	1 017 873	.1178	32.59

TWEEN THE VARIOUS SIZES OF CONSIGNMENTS IS THE RESULT OF AN ACTUAL ANALYSIS.

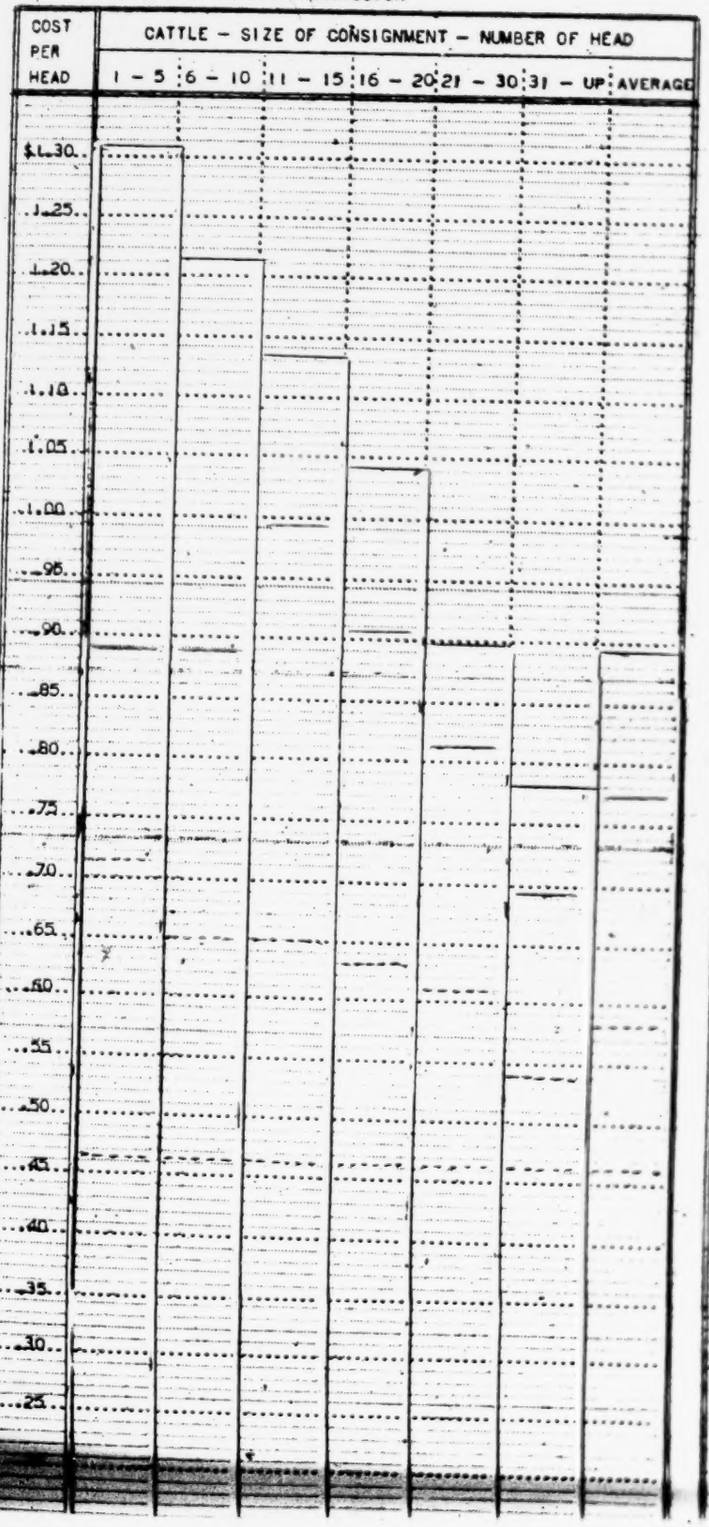
SSIONS AND THOSE UNDER THE SECRETARY'S ORDER AS BETWEEN THE VARIOUS SIZES OF CONSIGNMENTS ARE BOTH A RESULT OF AN ACTUAL APPLICATION OF THE RESPECTIVE

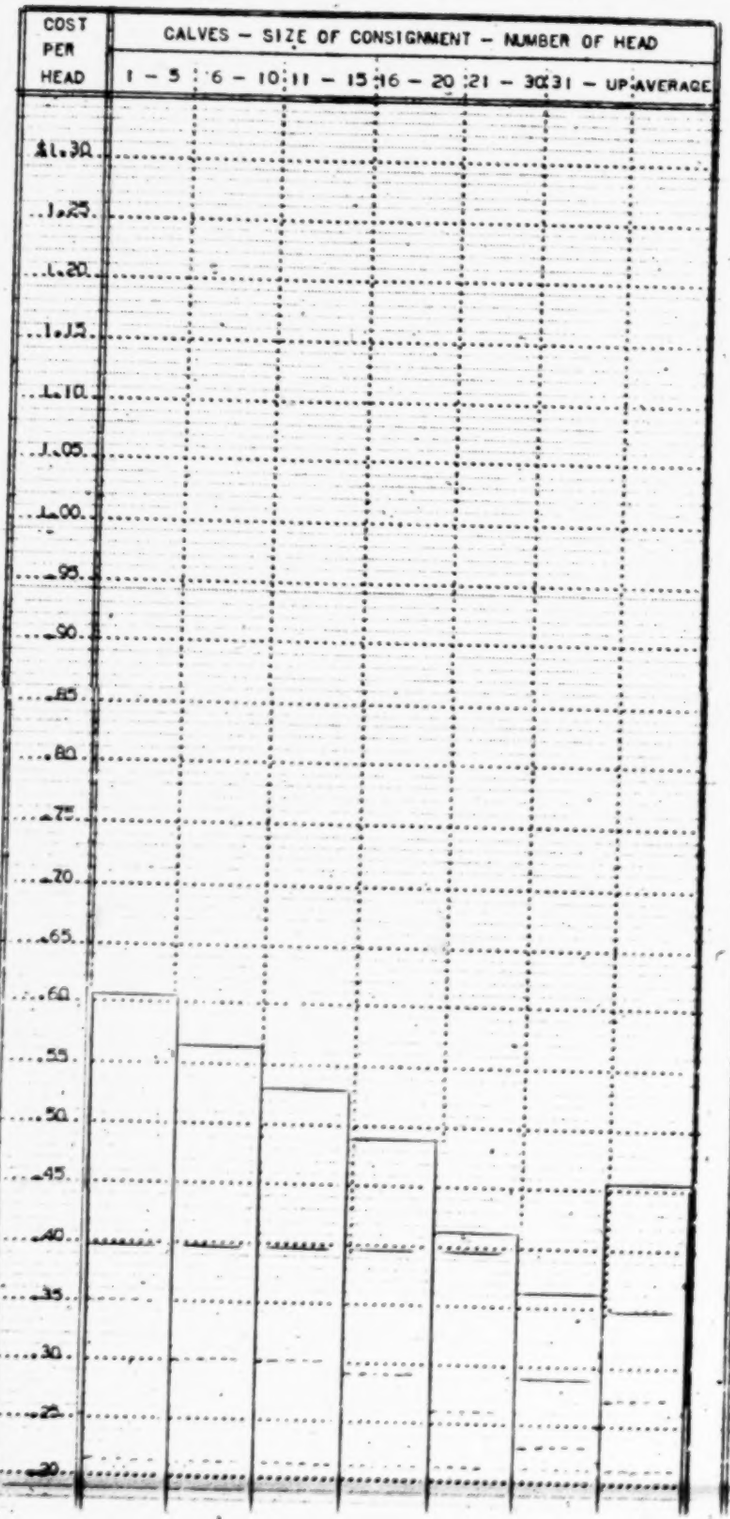
WEEN THE VARIOUS SIZES OF CONSIGNMENTS IS A RESULT OF SPECIAL TIME-STUDIES AND COST STUDIES MADE DURING AND FOR THE YEAR 1932.

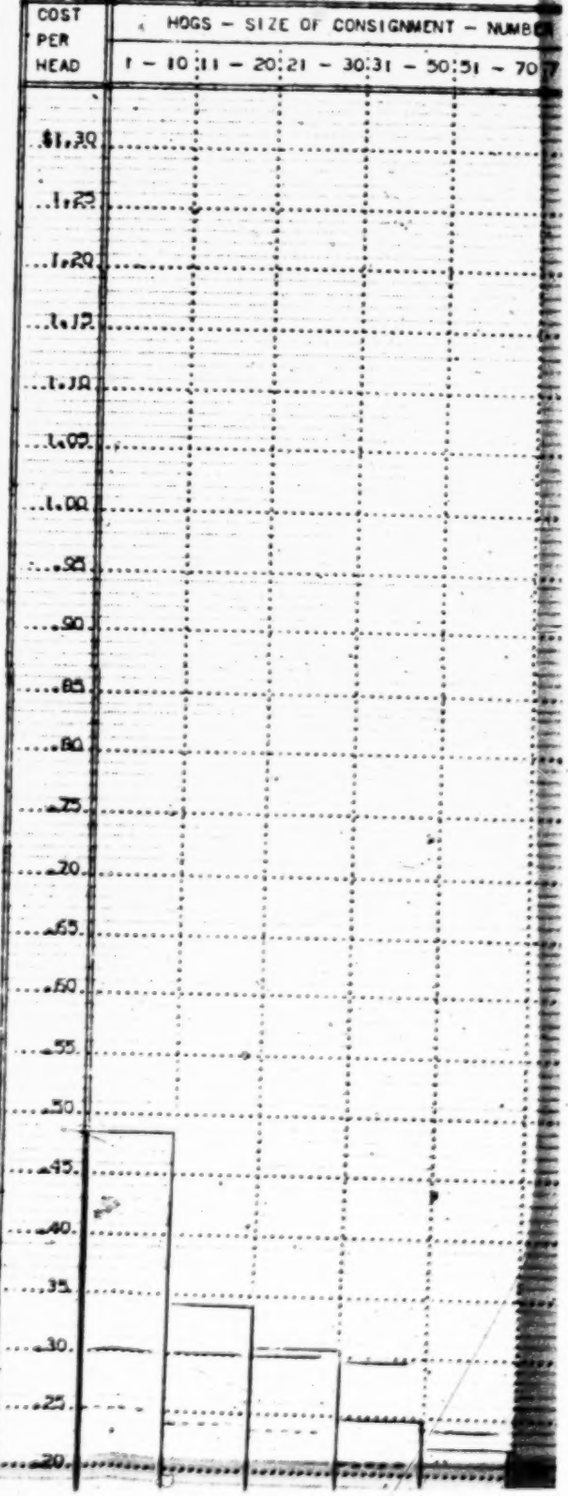
CATTLE AND CALVES, WHICH WERE ORIGINALLY COMBINED BECAUSE THESE TWO SPECIES ARE HANDLED IN THE SAME DIVISION OF THE YARDS,
ATIONSHIP RECOGNIZED BY THE SECRETARY WHEN HE BASED THE PRESCRIBED COMMISSION RATES ON HIS SO-CALLED REASONABLE COSTS.

RELATIVE COST (PER HEAD) OF SELLING CONSIGNMENTS OF VA
AS COMPARED WITH COMMISSIONS RECEIVE
ALL CHICAGO LIVE STOCK EXCHANGE FIRMS - FOR THE YEAR 1939

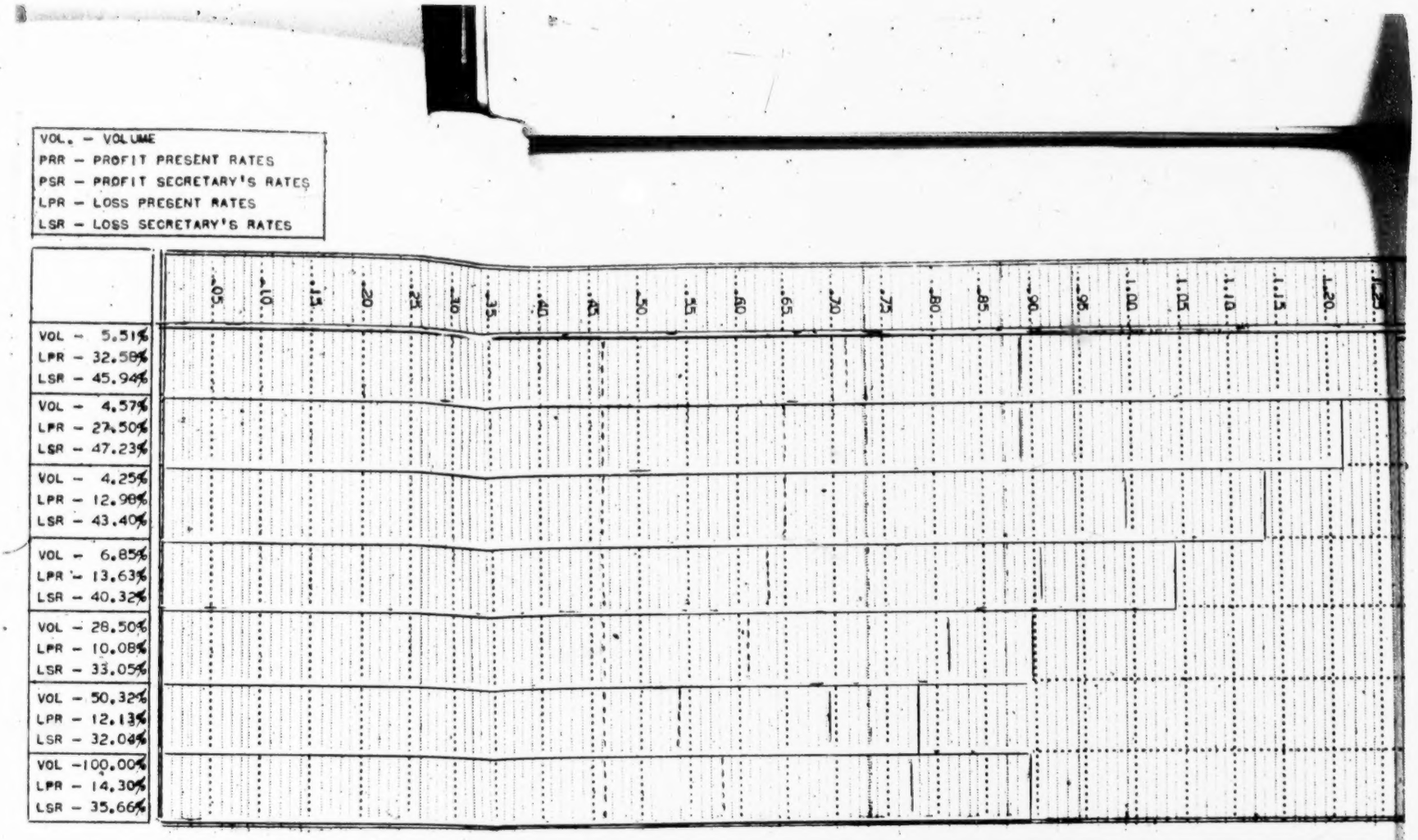
——— RESPONDENTS' ACTUAL COST
– – – – SECRETARY'S REASONABLE COST
——— PRESENT COMMISSIONS
– – – – SECRETARY'S ORDER COMMISSION







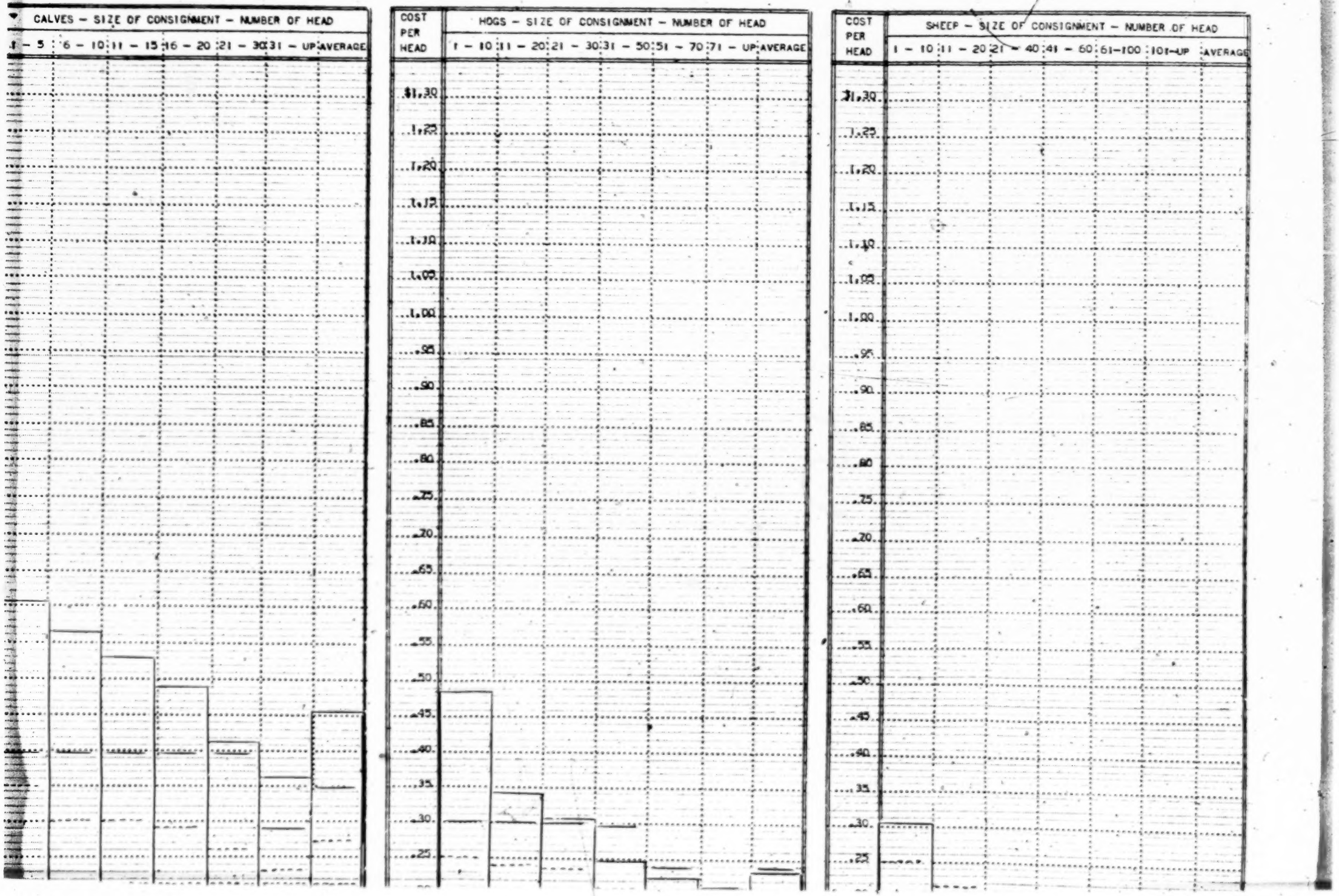
VOL. – VOLUME
PRR – PROFIT PRESENT RATES
PSR – PROFIT SECRETARY'S RATES
LPR – LOSS PRESENT RATES
LSR – LOSS SECRETARY'S RATES

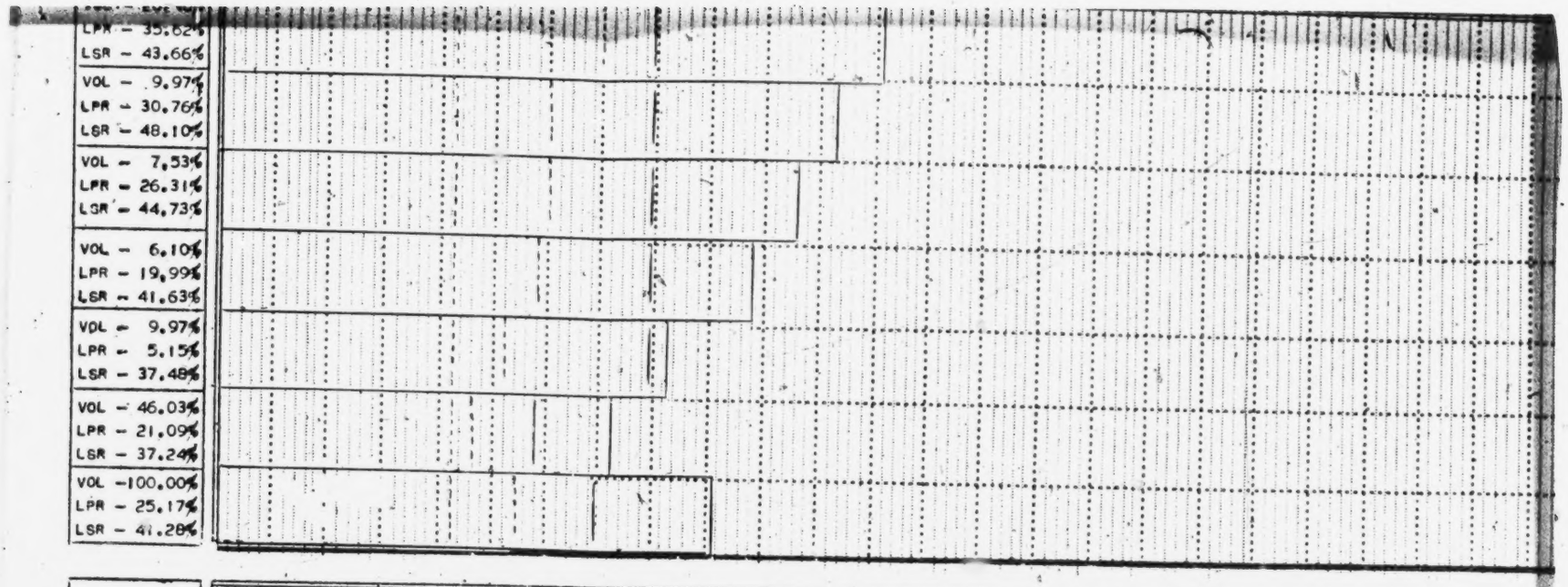


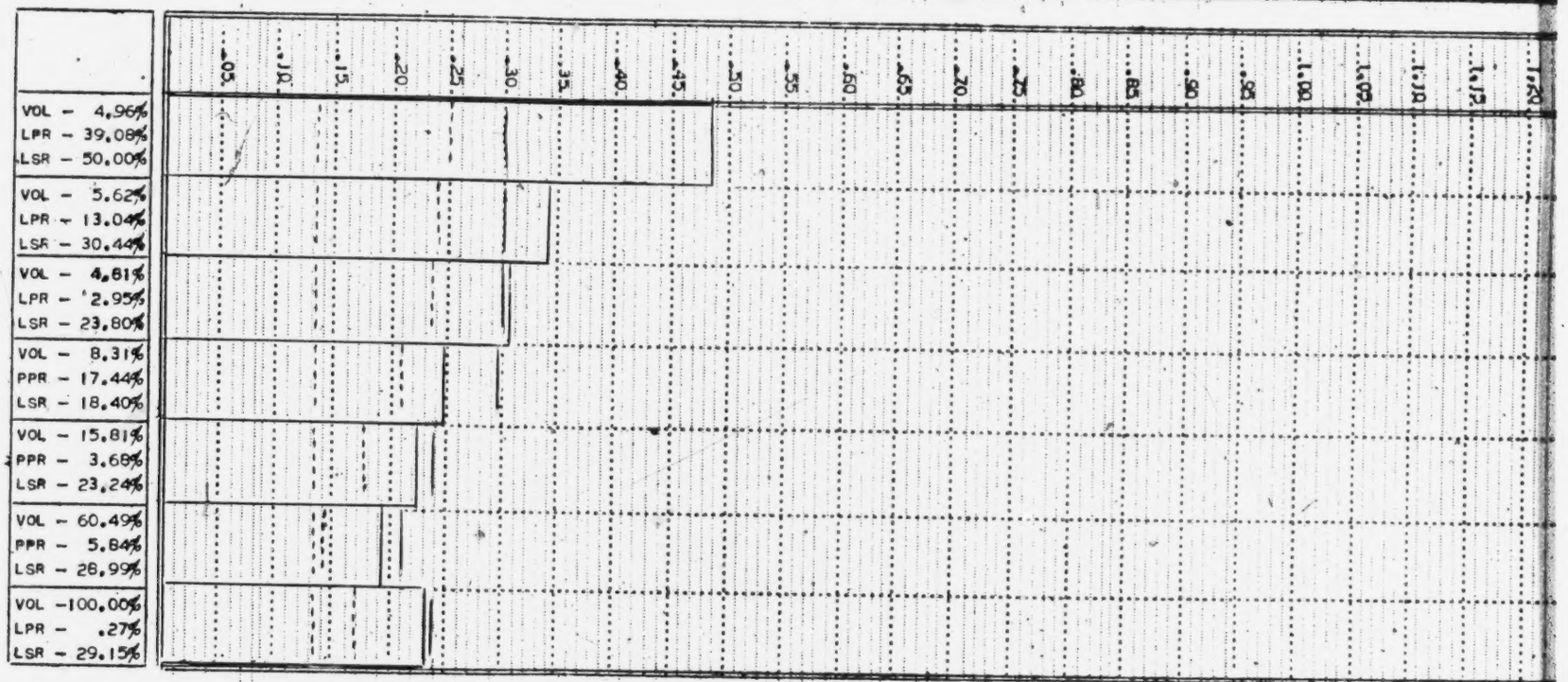
PREPARED BY - EARLE D. MUDD, CONSULTING ACCOUNTANT
FOR THE CHICAGO LIVE STOCK EXCHANGE

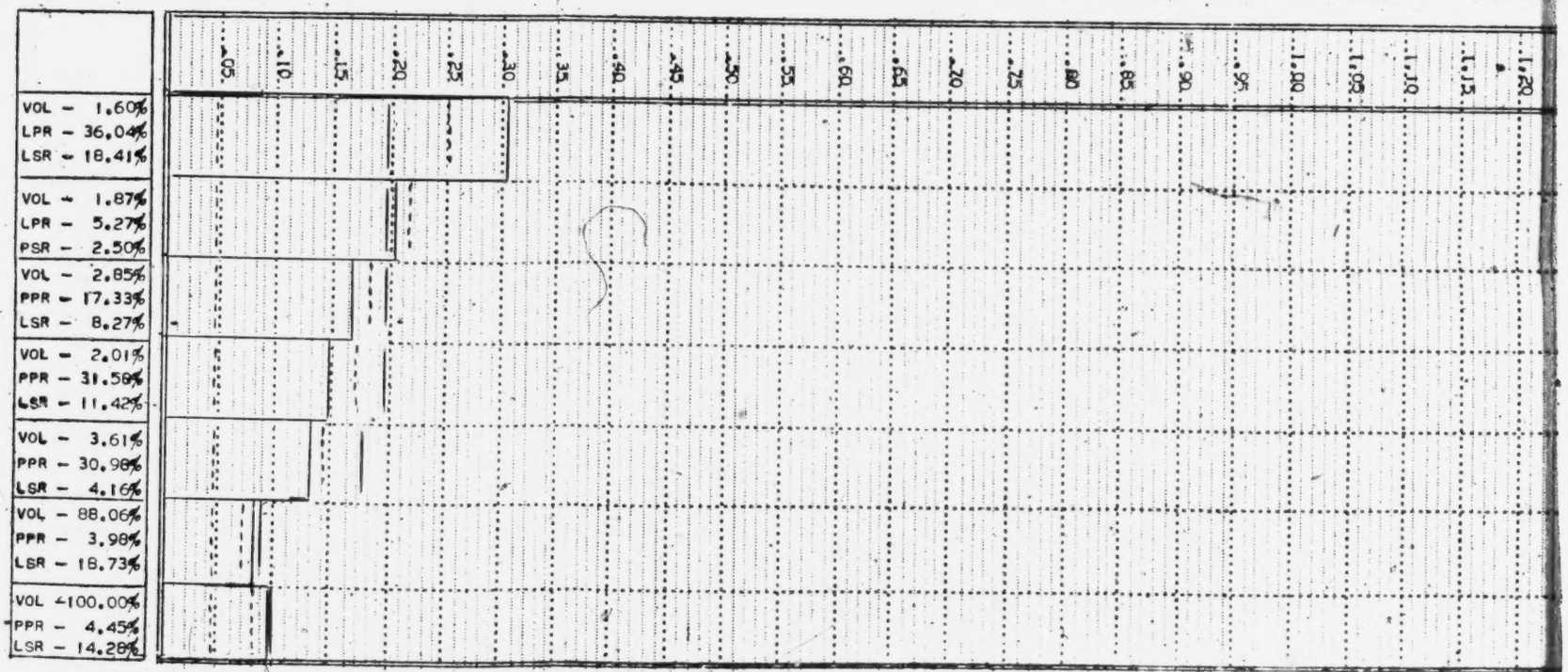
COST (PER HEAD) OF SELLING CONSIGNMENTS OF VARIOUS SIZES AS COMPARED WITH COMMISSIONS RECEIVED

ALL CHICAGO LIVE STOCK EXCHANGE FIRMS - FOR THE YEAR 1932




LPR – 35.62%
LSR – 43.66%
VOL – 9.97%
LPR – 30.76%
LSR – 48.10%
VOL – 7.53%
LPR – 26.31%
LSR – 44.73%
VOL – 6.10%
LPR – 19.99%
LSR – 41.63%
VOL – 9.97%
LPR – 5.15%
LSR – 37.48%
VOL – 46.03%
LPR – 21.09%
LSR – 37.24%
VOL –100.00%
LPR – 25.17%
LSR – 41.28%


VOL – 4.96%
LPR – 39.08%
LSR – 50.00%
VOL – 5.62%
LPR – 13.04%
LSR – 30.44%
VOL – 4.81%
LPR – 12.95%
LSR – 23.80%
VOL – 8.31%
PPR – 17.44%
LSR – 18.40%
VOL – 15.81%
PPR – 3.68%
LSR – 23.24%
VOL – 60.49%
PPR – 5.84%
LSR – 28.99%
VOL –100.00%
LPR – .27%
LSR – 29.15%

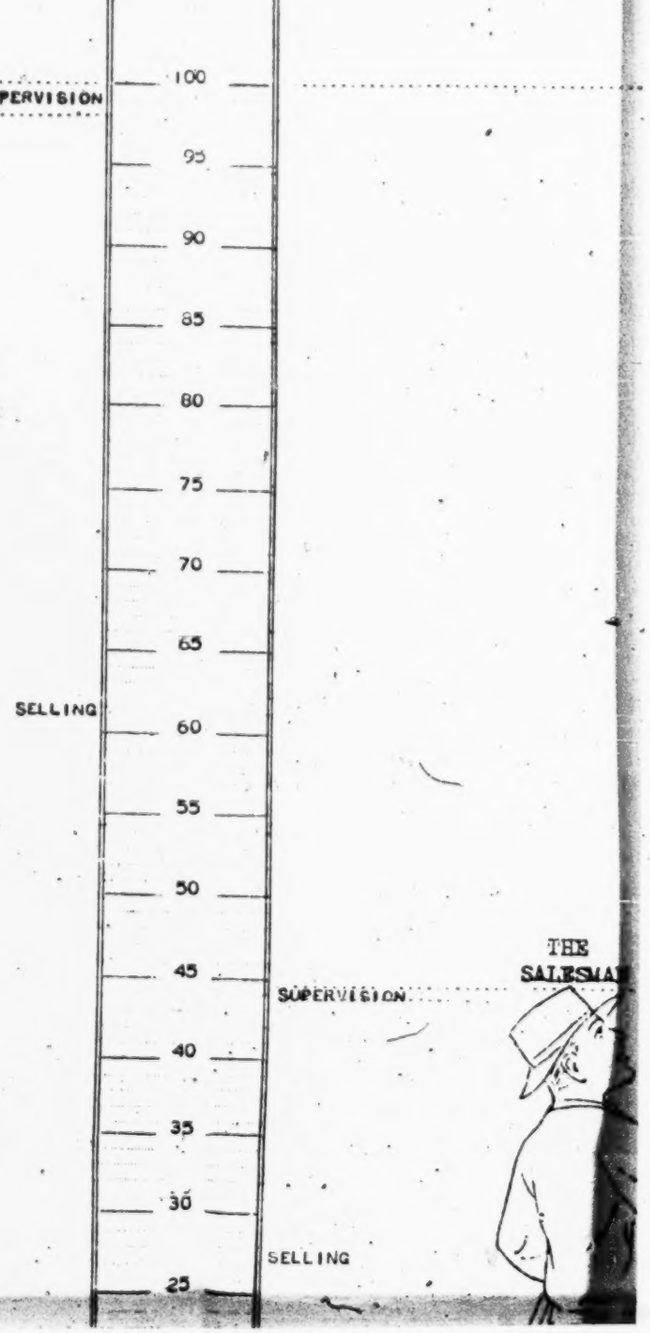

VOL – 1.60%
LPR – 36.04%
LSR – 18.41%
VOL – 1.87%
LPR – 5.27%
PSR – 2.50%
VOL – 2.85%
PPR – 17.33%
LSR – 8.27%
VOL – 2.01%
PPR – 31.58%
LSR – 11.42%
VOL – 3.61%
PPR – 30.98%
LSR – 4.16%
VOL – 88.06%
PPR – 3.98%
LSR – 18.73%
VOL –100.00%
PPR – 4.45%
LSR – 14.28%

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

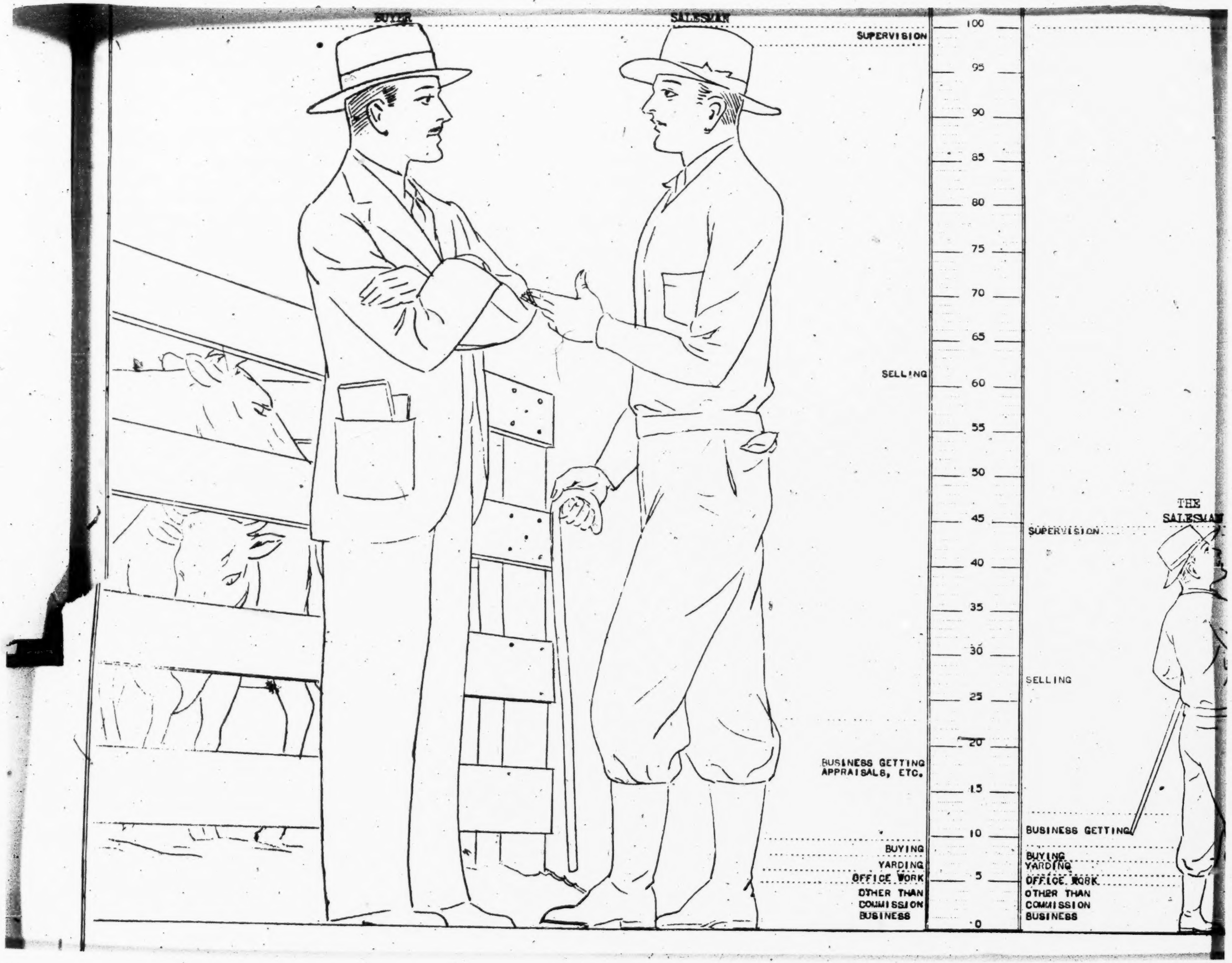
THE CATTLE SALESMAN EMPLOYED UNDER PRESENT COMMISSION RATES
as compared with
THE CATTLE SALESMAN WHO WILL HAVE TO BE EMPLOYED UNDER THE SECRETARY'S ORDER

THE CATTLE SALESMAN EMPLOYED UNDER PRESENT COMMISSION RATES

FUNCTIONAL PERCENTS



THE CATTLE SA


BUYER
SALESMAN
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BUSINESS GETTING APPRAISALS, ETC.
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OTHER THAN COMMISSION BUSINESS
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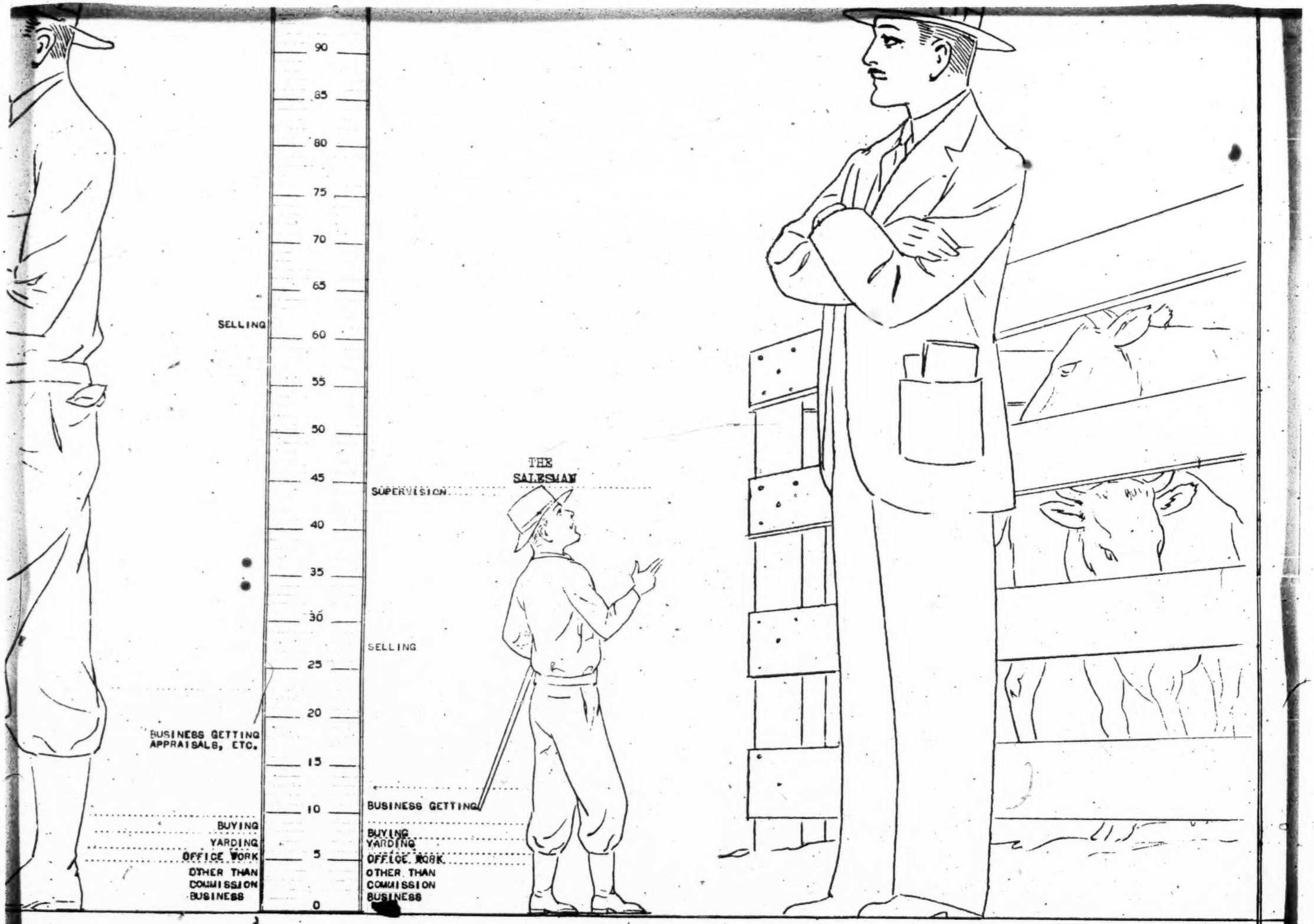
OFFICE WORK
OTHER THAN COMMISSION BUSINESS

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

Petitioners' Exhibit No. 9
Witness, Earle D. Mudd.

THE CATTLE SALESMAN EMPLOYED UNDER PRESENT COMMISSION RATES
as compared with
LE SALESMAN WHO WILL HAVE TO BE EMPLOYED UNDER THE SECRETARY'S ORDERED RATES

SCHEDULE NO. 1-a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APPRAISALS, ETC.
BUYING
YARDING
OFFICE WORK
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SALESMAN
SUPERVISION
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BUSINESS GETTING
BUYING
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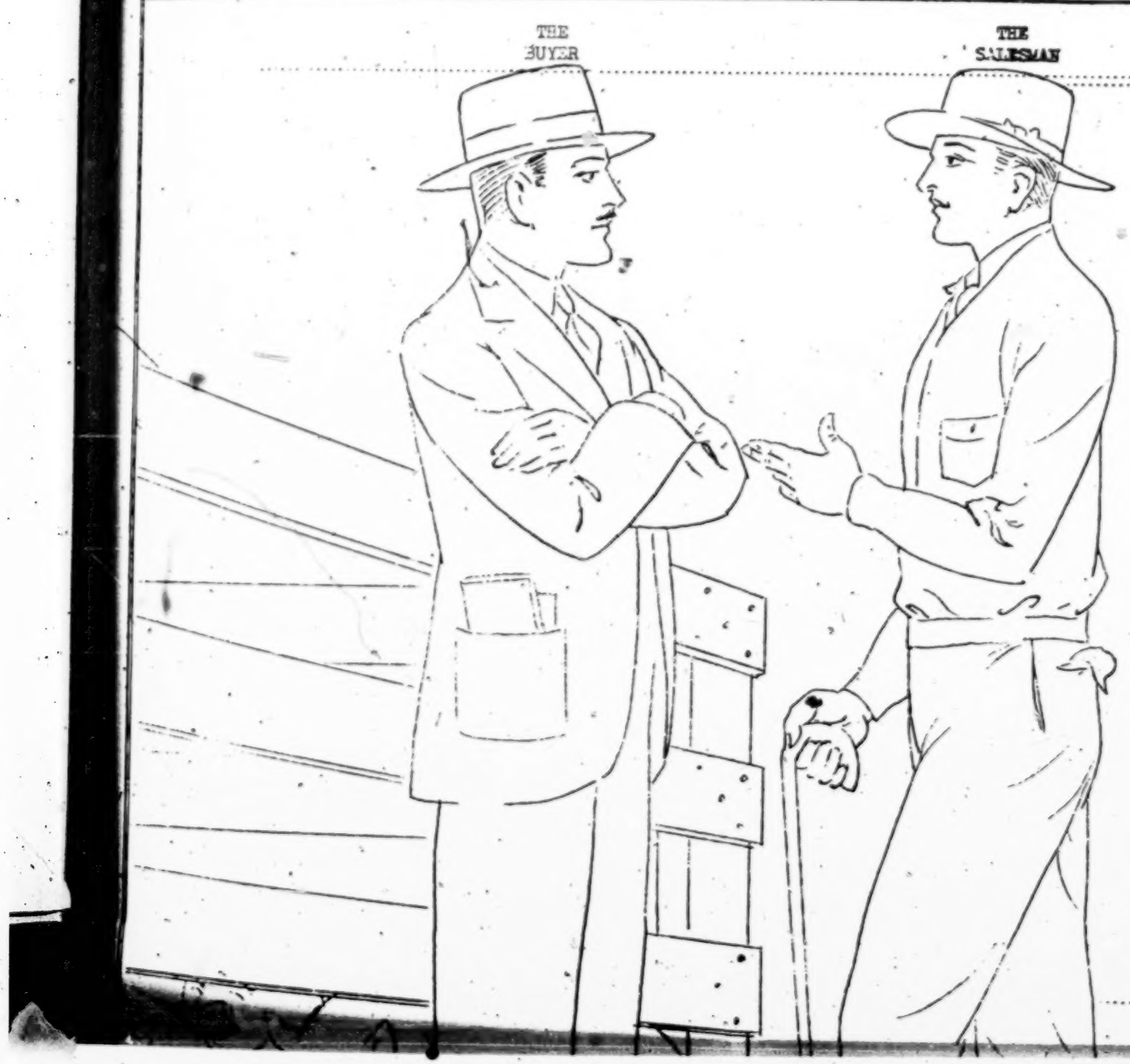
OTHER THAN
COMMISSION
BUSINESS

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

THE HOG SALESMAN EMPLOYED UNDER PRESENT COMMISSION RATES
as compared with
THE HOG SALESMAN WHO WILL HAVE TO BE EMPLOYED UNDER THE SECRETARY'S ORDERED RA

THE HOG SALESMAN EMPLOYED UNDER PRESENT COMMISSION RATES

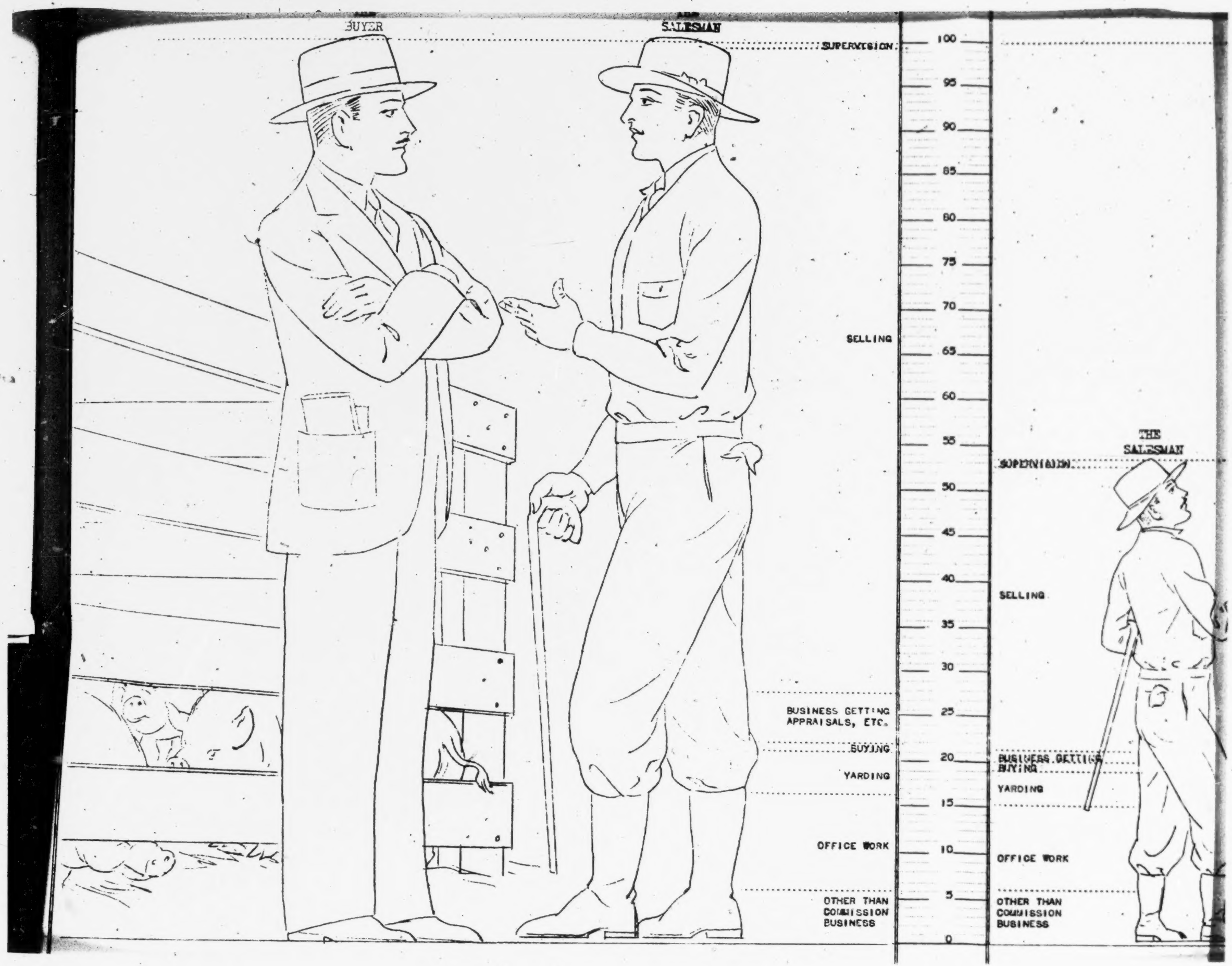


FUNCTIONAL PERCENTS

SUPERVISION 100 95 90 85 80 75 70 SELLING 65 60 55 50 45 40 35 30 25 BUSINESS GETTING APPRAISALS, ETC.

THE HOG SALE

THE SALESMAN
SUPERVISION
SELLING


BUYER
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SUPERVISION
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BUSINESS GETTING
APPRAISALS, ETC.
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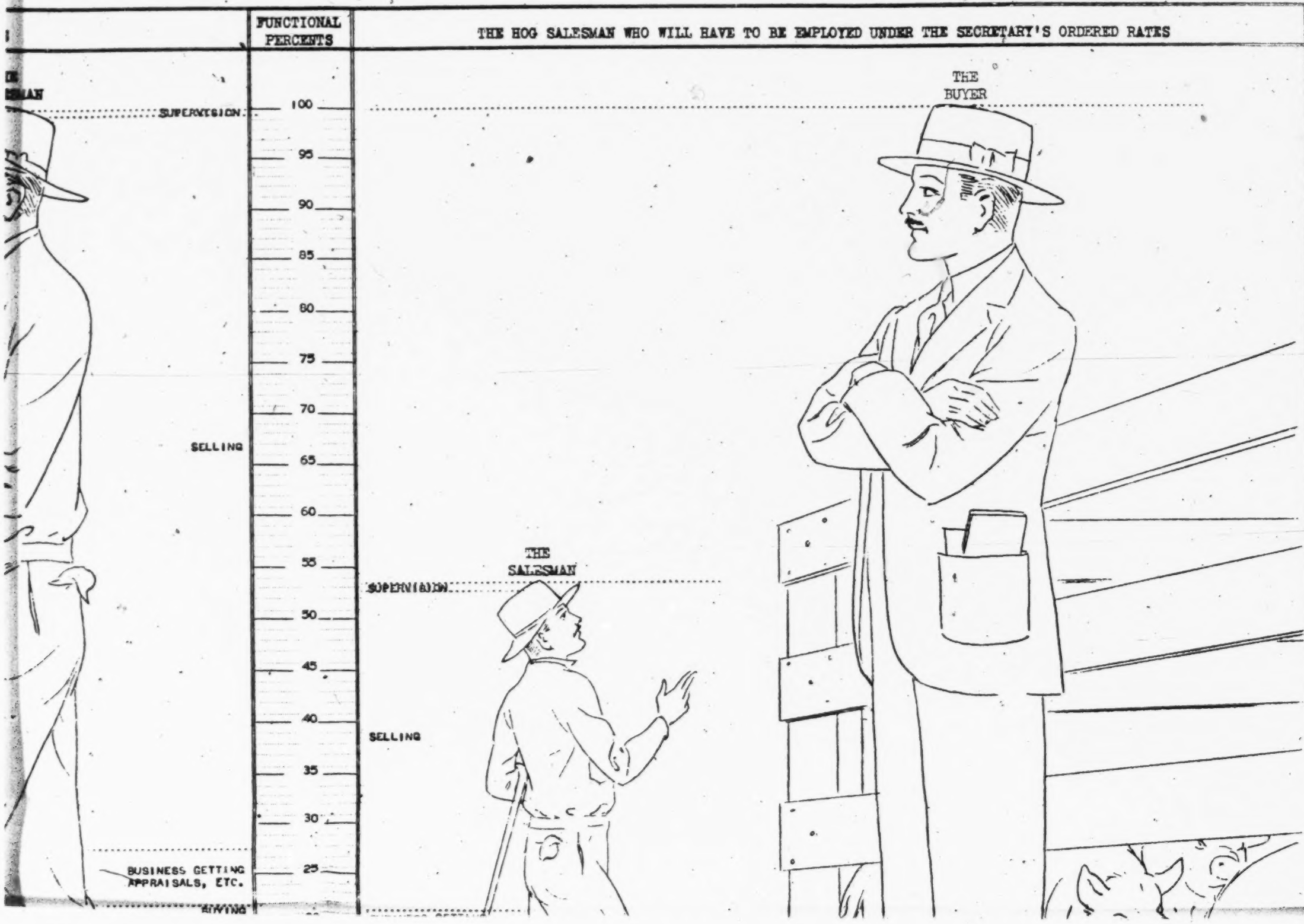
SUPERVISION
SELLING
BUSINESS GETTING
BUYING
YARDING
OFFICE WORK
OTHER THAN
COMMISSION
BUSINESS

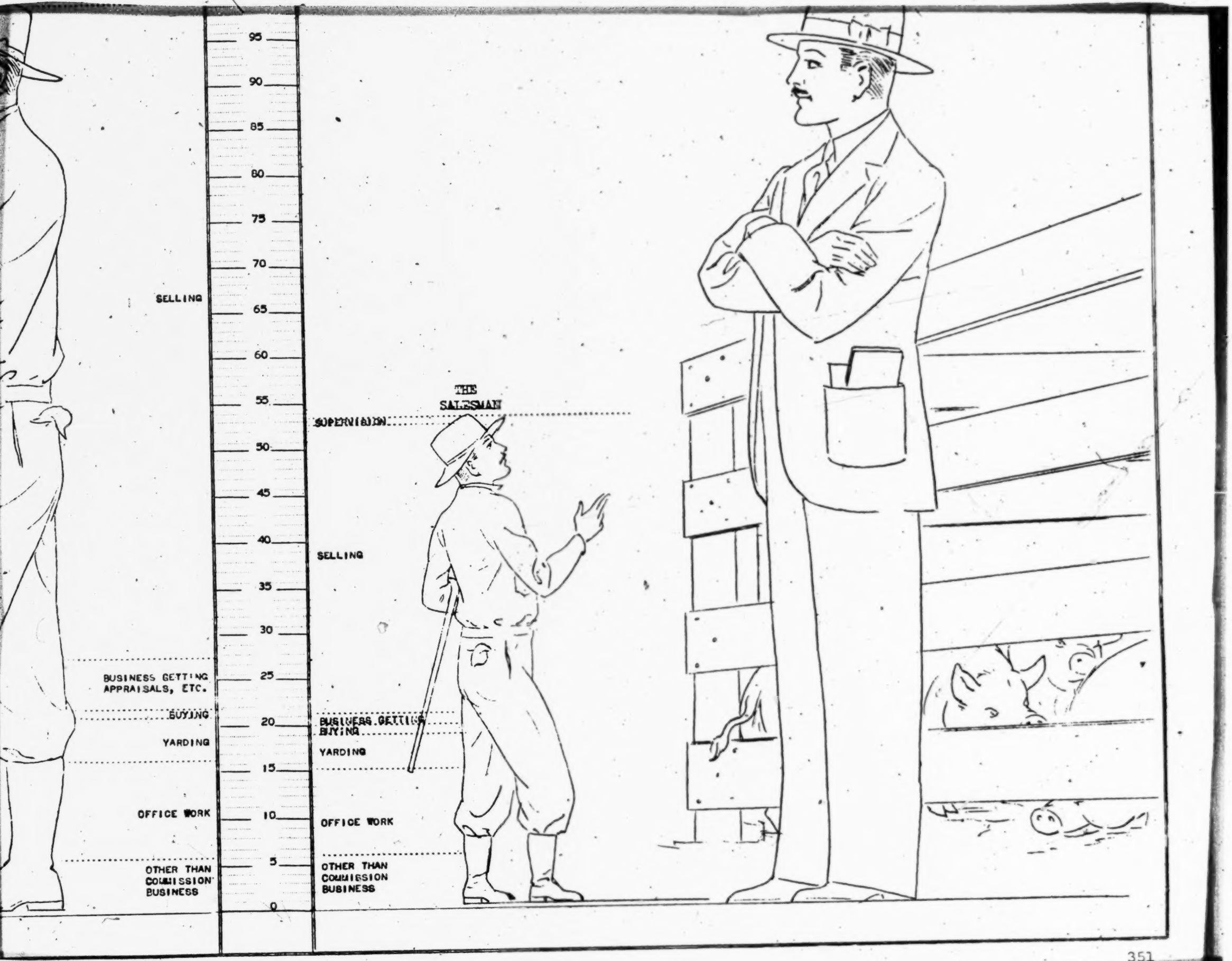
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

Petitioners' Exhibit No._____
Witness, Earle D. Mudd

THE HOG SALESMAN EMPLOYED UNDER PRESENT COMMISSION RATES
as compared with
SALESMAN WHO WILL HAVE TO BE EMPLOYED UNDER THE SECRETARY'S ORDERED RATES

SCHEDULE NO. 1-b

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APPRAISALS, ETC.
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SALESMAN
SUPERVISION
SELLING
BUSINESS GETTING
BUYING
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OFFICE WORK
OTHER THAN
COMMISSION
BUSINESS

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISIO
IN EQUITY NO. 13,829

THE SHEEP SALESMAN EMPLOYED UNDER PRESENT COMMISSION RA
as compared with
THE SHEEP SALESMAN WHO WILL HAVE TO BE EMPLOYED UNDER THE SECRETA

THE SHEEP SALESMAN EMPLOYED UNDER PRESENT COMMISSION RATES

FUNCTIONAL PERCENTS

THE SHEEP

SUPERVISION
SELLING
SUPERVISION
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BUSINESS GETTING APPRAISALS, ETC

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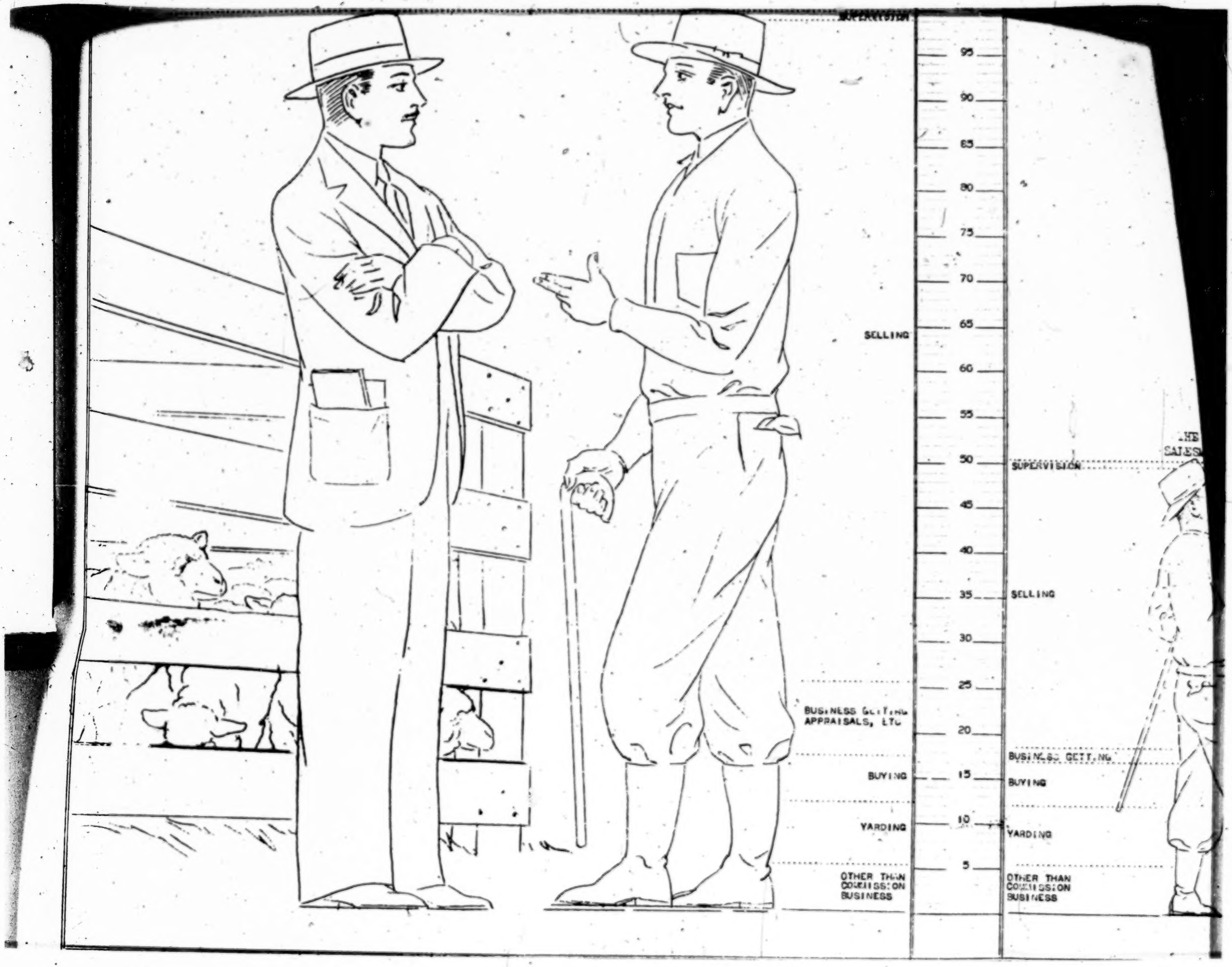
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APPRAISALS, ETC
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BUSINESS
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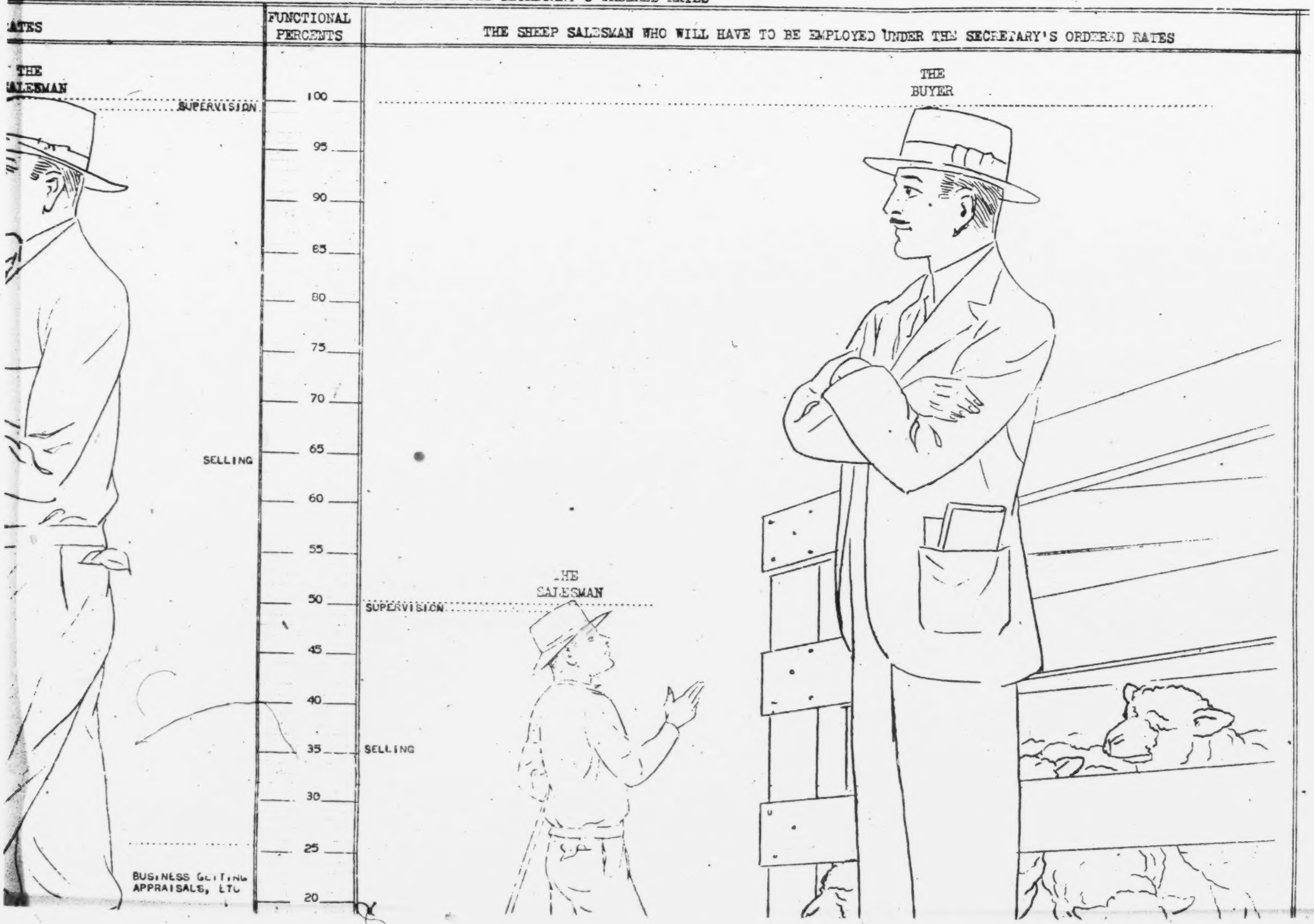
BUSINESS

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

Petitioners' Exhibit No._____
Witness, Earle D. Mudd.

THE SHEEP SALESMAN EMPLOYED UNDER PRESENT COMMISSION RATES
as compared with
THE SHEEP SALESMAN WHO WILL HAVE TO BE EMPLOYED UNDER THE SECRETARY'S ORDERED RATES

SCHEDULE NO. 1-c



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SUPERVISION
SELLING
BUSINESS GETTING APPRAISALS, ETC
BUSINESS GETTING
BUYING
YARDING
OTHER THAN COMMISSION BUSINESS

THE SALESMAN

SUPERVISION
SELLING
BUSINESS GETTING
BUYING
YARDING
OTHER THAN COMMISSION BUSINESS

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

COMPARISON OF THE ACTUAL SALESMAN AS EMPLOYED BY PETITIONERS WITH THE REDUCED SALESMAN WHO WILL HAVE TO BE EMPLOYED UNDER THE SECRETARY'S ORDER

EXPLANATION	TOTAL	DISTRIBUTION					
		SUPERVISION	SELLING	BUSINESS GETTING	BUYING	YARDING	
CATTLE & CALVES							
PETITIONERS' COST PER HEAD —	—	$ .0298	$ .4024	$ .1440	—	$ .0847	$
SECRETARY'S REASONABLE COST PER HEAD — ORDER JANY. 8, 1934	—	$ .0150	$ .1667	$ .0390	—	$ .0725	$
PERCENT OF SECY'S REASONABLE COST TO PETITIONERS' ACTUAL COST		50.34%	41.43%	27.08%	—	85.60%	
FUNCTIONAL DISTRIBUTION OF ALL SALESMEN'S SALARIES —	$1 263 690.23	$24 922.72	$ 950 371.60	$ 167 512.39	$ 20 866.23	$ 23 858.77	$ 16
FUNCTIONAL PERCENTS — SERVICE RENDERED BY SALESMEN —	100.00%	1.97%	75.21%	13.25%	1.65%	1.89%	1
FUNCTIONAL PERCENTS — SALESMAN AFTER REDUCED BY SECRETARY —	44.85%	.99%	31.16%	3.59%	1.65%	1.62%	1
HOGS							
PETITIONERS' COST PER HEAD —	—	$ .0080	$ .0938	$ .0435	—	$ .0332	$
SECRETARY'S REASONABLE COST PER HEAD — ORDER JANY. 8, 1934	—	$ .0055	$ .0414	$ .0120	—	$ .0280	$
PERCENT OF SECY'S REASONABLE COST TO PETITIONERS' ACTUAL COST	—	68.75%	44.14%	27.59%	—	84.34%	86.
FUNCTIONAL DISTRIBUTION OF ALL SALESMEN'S SALARIES —	$ 467 061.49	$ 1 660.00	$ 335 882.99	$ 54 584.83	$ 2 619.13	$ 22 479.50	$ 22
FUNCTIONAL PERCENTS — SERVICE RENDERED BY SALESMEN —	100.00%	0.35%	71.91%	5.68%	0.56%	4.82%	10.
FUNCTIONAL PERCENTS — SALESMAN AFTER REDUCED BY SECRETARY —	53.37%	0.24%	31.74%	1.57%	0.56%	4.07%	9.
SHEEP							
PETITIONERS' COST PER HEAD —	—	$ .0059	$ .0351	$ .0209	—	$ .0089	$
SECRETARY'S REASONABLE COST PER HEAD — ORDER JANY. 8, 1934	—	$ .0030	$ .0148	$ .0050	—	$ .0085	$
PERCENT OF SECY'S REASONABLE COST TO PETITIONERS' ACTUAL COST	—	50.85%	42.17%	19.31%	—	95.51%	78.
FUNCTIONAL DISTRIBUTION OF ALL SALESMEN'S SALARIES —	$ 103 889.36	$ 540.00	$ 76 483.13	$ 8 677.41	$ 5 277.26	$ 8 402.37	—
FUNCTIONAL PERCENTS — SERVICE RENDERED BY SALESMEN —	100.00%	0.52%	73.62%	8.35%	5.08%	8.09%	—
FUNCTIONAL PERCENTS — SALESMAN AFTER REDUCED BY SECRETARY —	50.07%	0.26%	31.05%	1.61%	5.08%	7.73%	—

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

Petitioner's Exhibit No. _____
Witness, Earle D. Mudd

COMPARISON OF THE ACTUAL SALESMAN AS EMPLOYED BY PETITIONERS
WITH THE REDUCED SALESMAN WHO WILL HAVE TO BE EMPLOYED UNDER THE SECRETARY'S ORDER

SCHEDULE NO. 1-d

	TOTAL	DISTRIBUTION						
		SUPERVISION	SELLING	BUSINESS GETTING	BUYING	YARDING	OFFICE WORK	OTHER BUSINESS
	—	$ .0298	$ .4024	$ .1440	—	$ .0847	$ .0882	—
R JANY. 8, 1934	—	$ .0150	$ .1667	$ .0390	—	$ .0725	$ .0750	—
ONERS' ACTUAL COST		50.34%	41.43%	27.08%	—	85.60%	85.03%	—
ALARIES —	$1 263 690.23	$24 922.72	$ 950 371.60	$ 167 512.39	$ 20 866.23	$ 23 858.77	$ 16 244.95	$ 59 913.57
ALESMEN —	100.00%	1.97%	75.21%	13.25%	1.65%	1.89%	1.29%	4.74%
D BY SECRETARY —	44.85%	.99%	31.16%	3.59%	1.65%	1.62%	1.10%	4.74%
	—	$ .0080	$ .0938	$ .0435	—	$ .0332	$ .0290	—
R JANY. 8, 1934	—	$ .0055	$ .0414	$ .0120	—	$ .0280	$ .0250	—
ONERS' ACTUAL COST	—	68.75%	44.14%	27.59%	—	84.34%	86.21%	—
ALARIES —	$ 467 061.49	$ 1 660.00	$ 335 882.99	$ 54 584.83	$ 2 619.13	$ 22 479.50	$ 22 261.52	$ 27 573.52
ALESMEN —	100.00%	0.35%	71.91%	5.68%	0.56%	4.82%	10.78%	5.90%
D BY SECRETARY —	53.37%	0.24%	31.74%	1.57%	0.56%	4.07%	9.29%	5.90%
	—	$ .0059	$ .0351	$ .0209	—	$ .0089	$ .0115	—
R JANY. 8, 1934	—	$ .0030	$ .0148	$ .0050	—	$ .0085	$ .0090	—
ONERS' ACTUAL COST	—	50.85%	42.17%	19.31%	—	95.51%	78.26%	—
ALARIES —	$ 103 889.36	$ 540.00	$ 76 483.13	$ 8 677.41	$ 5 277.26	$ 8 402.37	—	$ 4 509.19
ALESMEN —	100.00%	0.52%	73.62%	8.35%	5.08%	8.09%	—	4.34%
D BY SECRETARY —	50.07%	0.26%	31.05%	1.61%	5.08%	7.73%	—	4.34%

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
EQUITY NO. 13 829

Petitioners' Exhibig No. 10
Witness, Mudd E. D.

SCHEDULE NO. 9

STATEMENT SHOWING THAT SMALL VOLUME FIRMS HAVE VERY LITTLE EFFECT ON MARKET COSTS AND DO NOT INFLUENCE THE LEVEL OF RATES
(All firms handling less than 200 cars of livestock - unless they handled more than 100 cars of cattle & calves - are eliminated)
Covering all Chicago Live Stock Exchange firms for the year 1932.

	NAME OF FIRM	NUMBER OF CARS HANDLED				ACTUAL RESULTS (ALL FIRMS)				RESULTS IF SMALL FIRMS WERE ELIMINATED			
		CATTLE & CALVES	HOGS	SHEEP	ALL SPECIES	COSTS	COMMISSIONS	AMOUNT P & L	PERCENT P & L	COMMS SMALL FIRMS	COMMS LARGE FIRMS	AMOUNT P & L	PERCENT P & L
1	STRADER BROTHERS	42	54	2	98	3 362	1 817	1 545	45.95				
2	ADAMS, CORRICK & HATCH	576	635	24	1 235	28 163	25 534	2 629	9.33	289	25 823	2 340	8.31
3	ADLER SONS & CO.	161	95	3	259	4 099	5 125	1 026	25.03	58	5 183	1 084	26.45
4	ALEXANDER CONOVER & CO.	5 488	1 210	629	7 327	127 428	143 814	16 386	12.86	8 624	145 438	18 010	14.13
5	LOUIS ARMBRECHT COM. CO.	77	18	2	97	2 619	2 067	552	21.08				
6	BAKER HEYNE & CO.	999	896	39	1 934	50 807	41 262	9 545	18.79	466	41 728	9 079	17.87
7	SULLIVAN COM. CO.	6	5	1	12	560	249	311	55.46				
8	BARTON LOONEY & CO.	477	124	7	608	15 701	12 758	2 943	18.74	144	12 902	2 799	17.83
9	BENTON & CO.	89	216	8	313	5 658	7 134	1 476	26.09	81	7 215	1 557	27.52
10	BOWLES L. S. COM. CO.	2 225	726	650	3 601	82 724	73 926	8 798	10.64	834	74 760	7 964	9.63
11	SWANSON, GILMORE & CASTENHOLZ	2 325	1 245	31	3 601	83 930	71 167	12 763	15.21	803	71 970	11 960	14.25
12	ABE BURNETT & CO.	283	108	18	409	11 774	8 641	3 133	26.61	97	8 738	3 036	25.79
13	BYERS BROTHERS & CO.	134	143	8	285	12 330	5 691	6 639	53.84	64	5 755	6 575	53.33
14	CALLAHAN L. S. COM. CO.	4	147	-	151	4 251	3 036	1 215	28.58				
15	HARRY L. CARPENTER	32	178	2	212	4 320	4 131	189	4.38	47	4 178	142	3.29
16	CENTRAL L. S. COM. CO.	968	614	28	1 610	47 137	32 138	14 999	31.82	363	32 501	14 636	31.05
17	CLARK BOWLES & CO.	15	35	1	51	2 792	956	1 836	65.76				
18	JOHN CLAY & CO.	5 753	1 174	2 229	9 156	141 612	179 580	37 968	26.81	2 028	181 608	39 996	28.24
19	COCHRAN HENNEBERRY & WALLACE	1 151	1 078	62	2 291	61 481	46 194	15 287	24.86	522	46 716	14 765	24.02
20	CONKLIN BROS. COM. CO.	1 782	1 086	32	2 900	67 295	57 762	9 533	14.17	652	58 414	8 881	13.20
21	H. D. COPELAND & CO.	1 721	1 191	155	3 067	73 290	63 721	9 569	13.06	719	64 440	8 850	12.08
22	SWINEY BROTHERS	693	1 273	44	2 010	52 492	42 828	9 664	18.41	484	43 312	9 180	17.49
23	DOLAN, LUDEMAN & CO.	1 667	782	14	2 463	57 197	46 258	10 939	19.13	522	46 780	10 417	18.21
24	DROVERS COM. CO.	1 693	585	18	2 296	48 270	45 385	2 885	5.98	512	45 897	2 373	4.92
26	H. L. DUNNING & CO.	835	425	12	1 272	29 586	24 965	4 621	15.62	282	25 247	4 339	14.67
27	H. O. THOMPSON & CO.	214	224	7	445	11 592	10 328	1 264	10.90	117	10 445	1 147	9.89
28	ETTLINGER L. S. COM. CO.	451	334	20	805	15 813	15 313	500	3.16	173	15 486	327	2.07
29	EVANS, SNIDER, BUEL COM. CO.	485	631	283	1 399	31 704	28 213	3 491	11.01	319	28 532	3 172	10.01
30	FILLER, WILSON & MC CLELLAND	1 197	293	23	1 513	31 590	30 259	1 331	4.21	342	30 601	969	3.13
31	FRED FREEMAN	40	-	-	40	1 413	408	1 005	71.13				
32	I. O. FRY	68	22	6	96	2 623	1 931	692	26.38				
33	WM. GENTLEMAN & SONS	2 089	905	59	3 053	70 103	65 479	4 624	6.60	739	66 218	3 885	5.54
34	GILLOGLY & CO.	1 058	996	31	2 085	51 807	44 991	6 816	13.16	507	45 498	6 309	12.18
35	GREENWOOD COM. CO.	122	290	6	418	9 828	9 548	280	2.85	108	9 656	172	1.75
36	HAINE & RENEKER	364	60	23	447	12 662	8 970	3 692	29.16	101	9 071	3 591	28.36
37	CHAS. E. HARDING CO.	500	770	15	1 285	40 748	26 657	14 091	34.58	301	26 958	13 790	33.84
38	UNITED COM. CO.	1 281	557	48	1 886	47 382	37 957	9 425	19.90	429	38 386	8 996	18.99
39	GEO. W. VON BERNER	41	169	1	211	4 518	4 411	107	2.37	50	4 461	57	1.26
40	HEFNER COM. CO. INC.	804	640	24	1 468	32 536	32 164	372	1.14	363	32 527	9	.03
41	GEO. F. HOGAN	11	10	-	21	1 473	443	1 030	69.93				
42	HOLLOWAY & OGREN	415	878	25	1 318	27 873	28 314	441	1.58	320	28 634	761	2.73
43	IOWA LIVE STOCK COM. CO.	1 495	581	12	2 088	44 408	40 362	4 046	9.11	456	40 818	3 590	8.08
44	DAVID C. WAGNER	28	174	7	209	4 821	4 340	481	9.98	49	4 389	432	8.96
45	WALTERS & DUNBAR	3 294	1 217	144	4 655	100 168	88 541	11 627	11.61	1 000	89 541	10 627	10.61
46	WALTER BROTHERS	117	39	6	162	3 914	3 346	568	14.51	38	3 384	530	13.54
47	KNETTLE BROTHERS	40	86	-	126	3 351	1 563	1 788	53.36				
48	KUENSTER L. S. COM. CO.	2 114	1 543	77	3 734	75 466	67 989	7 477	9.91	767	68 756	6 710	8.89
49	JOHN A. WATERS L.S. COM. CO.	-	61	-	61	2 094	1 205	889	42.45				

45	WALTERS & DUNBAR	3 294	1 217	144	4 655	100 168	88 541	11 627	11.61	1 000	89 541	10 627	10.61
46	WALTER BROTHERS	117	39	6	162	3 914	3 346	568	14.51	38	3 384	530	13.54
47	KNETTLE BROTHERS	40	86	–	126	3 351	1 563	1 788	53.36				
48	KUENSTER L. S. COM. CO.	2 114	1 543	77	3 734	75 466	67 989	7 477	9.91	767	68 756	6 710	8.89
49	JOHN A. WATERS L.S. COM. CO.	–	61	–	61	2 094	1 205	889	42.45				
50	LAMBRIGHT-KEYS & HUSTON	252	177	7	436	12 862	9 404	3 458	26.89	106	9 510	3 352	26.06
51	LAWLER BROTHERS & CO.	4 520	916	182	5 618	111 625	115 144	-	-	1 300	116 444	4 819	4.32
52	L. B. WERDEN	155	23	1	179	2 899	3 581	682	23.53	40	3 621	722	24.91
54	W. W. WILSON & CO.	1 045	732	33	1 810	49 492	39 496	9 996	20.20	445	39 941	9 551	19.30
55	MARTIN BROS. & CO.	975	774	69	1 818	41 354	36 751	4 603	11.13	414	37 165	4 189	10.13
56	MCCAUSLAND, HOAG & VAUGHAN	2 264	239	55	2 558	52 635	51 017	1 618	3.07	575	51 592	1 043	1.98
57	MERRION & WILKINS	–	–	2 536	2 536	36 169	48 934	12 765	35.29	552	49 486	13 317	36.82
58	MILLER, WHITE & WOODS	1 567	820	87	2 474	58 529	51 524	7 005	11.97	581	52 105	6 424	10.98
59	MINTEER HUBBIRD & CO.	681	118	6	805	17 344	14 276	3 068	17.69	161	14 437	2 907	16.76
60	CHAS. H. MOBERLY	53	20	–	73	2 075	1 505	570	27.47				
61	MULLEN COM. CO.	699	455	10	1 164	25 334	23 581	1 753	6.92	266	23 847	1 487	5.87
62	MURRY & MC DOWELL	750	596	135	1 481	33 589	29 691	3 898	11.60	335	30 026	3 563	10.61
63	MUTUAL LIVE STOCK COM. CO.	1 178	921	33	2 132	47 817	42 501	5 316	11.12	479	42 980	4 837	10.12
64	NALLEY COM. CO.	211	147	5	363	7 615	8 260	645	8.47	93	8 353	738	9.69
65	JAS. F. NASH	48	99	4	151	4 199	3 238	961	22.89				
66	NATIONAL LIVE STOCK COM. CO.	5 286	1 510	550	7 346	144 561	146 514	1 953	1.35	1 655	148 169	3 608	2.50
67	E. F. WOELLER & CO.	214	47	–	261	6 754	5 092	1 662	24.61	58	5 150	1 604	23.75
68	HAFNER NIXON COM. CO.	83	144	2	229	4 903	4 860	43	.88	55	4 915	12	.24
69	NORTHWESTERN L.S. COM. CO.	705	616	27	1 348	34 282	26 606	7 676	22.39	301	26 907	7 375	21.51
70	SILAS PALMER & SONS	1 478	521	21	2 020	49 501	42 162	7 339	14.83	475	42 637	6 864	13.87
71	WOOD BROTHERS	2 465	856	612	3 933	71 702	77 790	6 088	8.49	878	78 668	6 966	9.72
72	JOHN PATTERSON & SON	164	14	–	178	1 661	1 095	566	34.08	12	1 107	554	33.35
73	PETERSON TURNBULL & CO.	936	631	36	1 603	38 239	33 351	4 888	12.78	377	33 728	4 511	11.80
74	PRITCHARD COM. CO.	178	83	1	262	12 097	4 615	7 482	61.84	52	4 667	7 430	61.42
75	QUINN COM. CO.	1 246	182	16	1 444	31 854	30 280	1 574	4.94	341	30 621	1 233	3.87
76	GLEN K. WOOD & CO.	19	72	2	93	2 008	2 149	141	7.02				
77	RICE BROTHERS	2 712	844	84	3 640	85 850	70 982	14 868	17.32	801	71 783	14 067	16.39
78	ALEX RINDERLE & CO.	404	612	81	1 097	26 043	25 260	783	3.01	285	25 545	498	1.91
79	ROACH L. L. COM. CO.	560	68	5	633	16 392	11 337	5 055	30.84	128	11 465	4 927	30.06
80	CHAS. O. ROBINSON & CO.	1 410	154	65	1 629	32 895	31 635	1 260	3.83	356	31 991	904	2.75
81	ROSENBAUM BROTHERS & CO.	1 907	554	257	2 718	76 874	53 436	23 438	30.49	603	54 039	22 835	29.70
82	SARSFIELD & SCHROCK COM. CO.	178	842	5	1 025	17 070	14 659	2 411	14.12	166	14 825	2 245	13.15
83	NANCEY, SINNARD & ROBERTS	1 196	598	90	1 884	48 653	37 698	10 955	22.52	425	38 123	10 530	21.64
84	GEORGE M. BROWNSON & CO.	51	218	2	271	5 164	5 747	583	11.29	65	5 812	648	12.55
85	SCHROEDER L. S. COM. CO.	420	476	9	905	18 706	19 669	963	5.15	222	19 891	1 185	6.33
86	SHELDON COM. CO.	66	121	2	189	3 996	3 962	34	.85				
87	SHERWOOD & SON	320	366	11	697	17 591	16 000	1 591	9.04	181	16 181	1 410	8.02
88	W. E. YOUNG & CO.	22	16	1	39	1 053	782	271	25.74				
89	SINCLAIR COM. CO.	23	2	–	25	1 830	397	1 433	78.31				
90	W. R. SMITH & SONS	–	–	1 093	1 093	31 189	20 614	10 575	33.91	233	20 847	10 342	33.16
91	L. SPENCER & CO.	37	264	10	311	10 031	6 960	3 071	30.62	79	7 039	2 992	29.83
92	STAFFORD BROTHERS	1 217	686	55	1 958	37 709	40 356	2 647	7.02	455	40 811	3 102	8.23
93	STANDARD L. S. COM. CO.	738	938	111	1 787	41 341	38 327	3 014	7.22	465	38 792	2 549	6.17
94	STARRETT L. S. COM. CO.	343	88	4	435	11 493	7 616	3 877	33.37	86	7 702	3 791	32.99
95	STEWARD & MCILLHANY	118	24	–	142	4 171	3 031	1 140	27.33	34	3 065	1 106	26.52
96	ST.JOHN, COMPTON, DUNBAR CO.	1 044	547	37	1 628	40 536	32 695	7 841	19.34	369	33 064	7 472	18.43
97	STOCKGAENS L. S. COM. CO.	1 402	1 065	94	2 561	64 488	52 670	11 818	18.33	594	53 264	11 224	17.40
98	ACKER & CO.	22	7	–	29	2 279	570	1 709	74.99				
101	WM. DANIEL	112	11	–	123	3 484	2 325	1 159	33.27	26	2 351	1 133	32.52
102	WILL. C. WOOD	12	104	2	118	2 586	2 674	12	.45				
103	JOHN A. HAVEY	1	1	285	287	5 465	5 238	227	4.15	59	5 297	168	3.07
104	INGWERSEN, MOSIER & INGWERSEN	781	180	8	969	22 605	18 565	4 040	17.87	210	18 775	3 830	16.94
111	A. P. SCHMAL	97	37	6	140	3 867	3 211	656	16.96				
	ALL FIRMS	87 789	44 059	11 583	143 431	3 181 326	2 878 704	302 622	9.51	32 163	2 878 704	254 091	7.99

NOTE: UNDER "RESULTS IF SMALL FIRMS WERE ELIMINATED", THE COMMISSIONS OF SMALL FIRMS HAVE BEEN SPREAD OVER THE LARGE FIRMS IN PROPORTION TO THEIR EXISTING VOLUME, ASSUMING THAT THIS ADDITIONAL BUSINESS COULD BE HANDLED BY THEM WITHOUT INCREASED EXPENSE.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

THE SECRETARY'S REASONABLE COST PER CARLOT
as compared with
THE PETITIONERS "MEDIAN", "WEIGHTED AVERAGE", AND "BULK-LINE" COST PER CARLOT
All Chicago Live Stock Exchange Firms - For The Year 1932.

CLASS OF BUSINESS	SECRETARY'S "REASONABLE" COST PER CAR	PETITIONERS' "MEDIAN" COST PER CAR	PETITIONERS' "WEIGHTED AVERAGE" COST PER CAR	PETITIONERS' "66-2/3% BULK-LINE" COST PER CAR	NO. OF FIRMS BELOW SECRETARY'S COST PER CAR	NO.
CATTLE & CALVES						
STRAIGHT CARS - SINGLE OWNERSHIP	$ 11.41	$ 22.78	$ 20.76	$ 22.24	3 OUT OF 95	130
STRAIGHT CARS - PLURAL OWNERSHIP	13.14	28.15	26.65	29.40	3 " " 93	15
MIXED CARS - SINGLE OWNERSHIP	17.64	30.17	30.98	34.02	8 " " 93	96
MIXED CARS - PLURAL OWNERSHIP	18.86	37.89	37.88	39.65	1 " " 94	9
DRIVE-INS	12.42	34.14	32.97	35.47	NONE	
HOGS						
STRAIGHT CARS - SINGLE OWNERSHIP	$ 11.99	$ 17.64	$ 17.57	$ 18.91	8 OUT OF 95	500
STRAIGHT CARS - PLURAL OWNERSHIP	11.33	20.86	20.43	21.73	3 " " 92	63
MIXED CARS - SINGLE OWNERSHIP	12.42	20.41	21.65	23.60	4 " " 84	16
MIXED CARS - PLURAL OWNERSHIP	11.83	23.86	23.40	24.46	1 " " 90	2
DRIVE-INS	11.07	25.05	24.09	25.66	1 " " 94	2
SHEEP						
STRAIGHT CARS - SINGLE OWNERSHIP	$ 11.15	$ 15.42	$ 17.46	$ 17.58	10 OUT OF 67	56
STRAIGHT CARS - PLURAL OWNERSHIP	10.25	19.67	21.44	21.99	5 " " 66	9
MIXED CARS - SINGLE OWNERSHIP	9.25	21.63	25.10	26.05	5 " " 49	7
MIXED CARS - PLURAL OWNERSHIP	9.21	28.00	30.74	29.75	1 " " 68	1
DRIVE-INS	9.54	33.55	35.34	37.02	NONE	

NOTE: THE "SECRETARY'S REASONABLE COST PER CAR" FOR THE RESPECTIVE MODES OF ARRIVAL HAS BEEN DETERMINED BY MULTIPLYING HIS "REASONABLE COST PE
(AS SHOWN ON PAGE 110 OF HIS ORDER DATED JANUARY 8, 1934) BY THE AVERAGE NUMBER OF HEAD PER CAR

STRICT COURT OF THE UNITED STATES
N DISTRICT OF ILLINOIS - EASTERN DIVISION
IN EQUITY NO. 13,829

Petitioners' Exhibit No. 11
Witness.

TARY'S REASONABLE COST PER CARLOT
as compared with
IGHTED AVERAGE", AND "BULK-LINE" COST PER CARLOT
Live Stock Exchange Firms - For The Year 1932.

ONERS' AN" ER CAR	PETITIONERS' "WEIGHTED AVERAGE" COST PER CAR	PETITIONERS' "66-2/3% BULK-LINE" COST PER CAR	NO. OF FIRMS BELOW SECRETARY'S COST PER CAR	AGGREGATE NO. OF CARS HANDLED BY SUCH FIRMS
78	$ 20.76	$ 22.24	3 OUT OF 95	130 OUT OF 46 016
15	26.65	29.40	3 " " 93	16 " " 13 008
17	30.98	34.02	8 " " 93	96 " " 2 018
89	37.88	35	1 " " 94	9 " " 3 289
14	32.97	35.47	NONE	NONE
.64	$ 17.57	$ 18.91	8 OUT OF 95	500 OUT OF 14 400
.86	20.43	21.73	3 " " 92	63 " " 11 203
.41	21.65	23.60	4 " " 84	16 " " 2 020
.86	23.40	24.46	1 " " 90	2 " " 4 360
.05	24.09	25.66	1 " " 94	2 " " 9 890
.42	$ 17.46	$ 17.58	10 OUT OF 67	56 OUT OF 7 511
.67	21.44	21.99	5 " " 66	9 " " 1 532
.63	25.10	26.05	5 " " 49	7 " " 243
.00	30.74	29.75	1 " " 68	1 " " 329
.55	35.34	37.02	NONE	NONE

VE MODES OF ARRIVAL HAS BEEN DETERMINED BY MULTIPLYING HIS "REASONABLE COST PER HEAD"
BY THE AVERAGE NUMBER OF HEAD PER CAR

[fol. 356] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Narrative Statement of Evidence Before Secretary of Agriculture, in Bureau of Animal Industry, Docket 402, a Part of Petitioners' Exhibit 13—Filed Dec. 17, 1935

[fol. 357] Department of Agriculture

United States of America

BEFORE THE SECRETARY OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY

Docket No. 402

SECRETARY OF AGRICULTURE

vs.

C. H. ACKER, Doing Business as C. H. Acker & Company, et al.

Narrative Statement of Evidence

Hearing held at Chicago, Illinois, Union Stock Yards, beginning May 15, 1933, before:

Examiner J. C. Brooke, Solicitor's office U. S. Department of Agriculture;

C. E. Miles, Esq., Office of the Solicitor, U. S. Department of Agriculture, and G. N. Dagger, Esq., U. S. Department of Agriculture, appeared for the Government;

J. S. Boyd, Esq., Chicago, Illinois, and John T. Sullivan, Esq., Waterloo, Iowa, appeared for members of The Chicago Live Stock Exchange;

E. M. O'Brien, Esq., Chicago, Illinois, appeared for the order buyers;

Mr. D. L. Swanson and Mr. H. M. Curry appeared for the Chicago Producers Commission Association; and

Mr. Albert Fickler of Chicago appeared for the Farmers' Union Live Stock Commission.

[fol. 358] MICHAEL GUILLAUME, a witness called by the Government testified as follows:

Direct examination:

I am an employee of the Department of Agriculture, Bureau of Animal Industry, residing in Chicago, with the Packers and Stockyards Administration of the Bureau of Animal Industry, and have been so employed twenty-six years and nine months with the Bureau.

I have been asked to obtain a map of the Chicago Stockyards and to delineate and outline certain locations upon that major map. I have complied with both instructions. These maps were purchased by the Government from the Stockyards Company. On the map, which is Government Exhibit 6 for identification, there appear certain plain marks and outlines. They were placed there by myself. The North is the upper part of the map and the points of the compass following.

The Union Stock Yards starts up in the Northern section of this map, and comes in a southerly direction. I do not know the age of this map. We do not know when it was made by the Union Stock Yards Company; we do not know the scale; we measured the distance between 47th and so-called 39th St., the Chicago River, commonly called Bubbly Creek in the olden days, we figure that is 50 inches, and we figure that is 100 feet to the inch. We therefore figure there is very close to a mile between 47th and 39th Street and in [fol. 359] Chicago we consider that a mile of territory.

That red crayon enclosure shows all platforms, chutes, holding pens for the reception of all incoming railroad cars containing livestock consigned direct to packers or to be sold by commission men operating on the market in the stockyards at Chicago or car stock consigned by consignors to themselves, either in transit or to be disposed of locally. It includes the lower deck pens of the hog house now used for yarding cattle and calves, hogs and sheep. The same platform chutes, and chute pens are used for outloading or cars containing cattle, calves, hogs and sheep for direct slaughter, for feeding purposes, change in transit, or breeding purposes. It will be observed that chute pens, holding pens, holding hogs to be sold for delivery to commission men, this we have found to be due to a lack of pen room on

busy days or to be cooled by drenching, which drenching facilities are provided in these chute pens. The holding pens on the lower level, we have observed to be used for holding pens by commission men and also used by order buyers.

They are also used for holding packer hogs, either direct or after being weighed to them. As to the upper decks of the hog house outlined by a double red crayon mark, at the northerly part of the map is one of two divisions of double red crayon marks. The stockyards company presented maps showing the upper holding and selling pens in the hog house. We have these maps here, and they are entitled at the top "Arrangement of Pens, Double Deck, House *House*" marked as Government Exhibit No. 7 for [fol. 360] identification. Leaving the Exchange Building you go down Laurel Street north and enter the area marked with the red crayon. There are figures noted on the map within the red crayon, Nos. 1 to 10, inclusive, designating the platform set out with those numbers. From these platforms lead chutes leading into the double chute pens. We find that at platform 1 there are available 94 chutes for holding 94 cars of livestock arriving at this platform. No. 1 platform is the far north platform to the west of Laurel Street on Exhibit 6. Platform 3 is provided with 84 chute pens. No. 3 Platform is the first platform south of Platform No. 1 near the northerly part of the map.

Platform 5, the platform south of 3, has 72 chute pens as stated. Then, we come to platform 7 that is south of platform 5. That has 72 chute pens. Next platform south is platform No. 9 having 55 chute pens. Crossing over Laurel Street in an easterly direction, Laurel Street being the division line between four divisions in the hog house, commonly termed and known in trade parlance as the Northeast Division, called the Rock Island division; that is the most northerly enclosure marked in red. Directly west of the Rock Island Division is the Burlington Division; directly south of the Rock Island Division is the Cuba division; and directly to the west of that, the northwest division. I have next outlined in orange crayon a section of the yards showing more car unloading facilities terminating in the Texas quarantine division. That is in the southwest corner of the yards where there is a battery of platforms, chutes, chute pens, which we have not observed in use for quite a

[fol. 361] few years. I have outlined a section with yellow crayon coming along the line in a southerly direction which would be in the southeast part of the yards. The crayon line goes up in a northerly direction, to the stone gate on Exchange Avenue. The crayon line again extends in a southerly direction, in a westerly direction and again in a southerly direction, terminating at the starting point.

Near the northern extremity of the stockyards, I have marked the section with green crayon; coming in a southerly direction, at the northern extremity of the yards shown on the map as being in the Rock Island Division, the green areas extending in a southern direction toward the Exchange Building. Another green area set out near the southern end of the yards shows the location of platforms, chutes and chute pens used for unloading trucked-in livestock consigned for sale to commission men. The above facilities can be and are used for out-loading of cattle, for feeding purposes, or immediate slaughter; also for handling hogs and sheep, if necessary. To the west of the plat and north and south of Exchange Avenue, there are two areas set out in violet crayon. These show the sheep house, part of it being double-decked, and show the pens for holding livestock for sale, packer-directs for dealer and order buyer use. The enclosure within the double violet lines shows the upper decks of the sheep house. We have a section set out in this map in blue crayon, on the west side of [fol. 362] the plat and adjoining that part of the plat marked Armour & Company General Office. That enclosure shows Armour holding pens for hogs, and I have never observed any other species of livestock yarded in these pens. There is a section in the extreme south of the plat set out in black crayon, and this shows the pens usually and customarily used by dealers in feeder cattle. Some of these pens are used by commission men when they have a heavy run of livestock for sale. South of the section just described is a section set out in brown used exclusively for holding packer-cattle.

In this great expansive space here which is so vitally necessary in this gigantic business called the livestock commission business, you will find entire sections that are not chalked off. That area is customarily used for holding cattle and calves and sometimes sheep for sale; also after being weighed either for shipment or immediate slaughter,

for feeder cattle or for breeding purpose cattle. The same pens are also used by order buyers and dealers and include the scales used to weigh cattle and calves in this section. Over in the southwest corner of the plat is another little section headed "Covered Pens" and on account of running out of different colored crayons, they are not set out. These pens are used for holding cattle over night by commission men or dealers or order buyers. They are in the southwest corner of the stockyards. Within the violet area, there are nine scales used for weighing sheep. Within this great ex- [fol. 363] panse, both to the south and north of Exchange Avenue, there are 21 cattle scales used for weighing cattle and calves. In that expanse set out to the far north of this plat and of the yards, and within the double red chalk line are located 21 scales for weighing hogs. That completes my description of Exhibit No. 6.

Exhibit No. 7 is the arrangement of the upper and lower hog house.

Government Exhibits No. 6 and No. 7, being maps of the Chicago Union Stockyards, were received in evidence.

FRED R. MITCHELL, a witness called by the Government, testified as follows:

Direct examination:

I reside at 7043 Paxton Avenue, Chicago, Illinois. Am general superintendent of Union Stock Yards & Transit Company and have been employed about ten years. I am in charge of the allotment of pens. Pen space is allotted to live stock commission firms according to their requirements upon all requests. The stock yards company may reassign pen locations to commission firms but it is infrequently done.

The area of the stockyards that is actually used for stock yards purposes is approximately a mile long and a half mile wide,—practically 320 acres.

[fol. 364] O. T. HENKLE, a witness called by the Government testified as follows:

Direct examination.

I reside in Chicago, Illinois, am vice-President and general manager of the Union Stock Yard & Transit Company; have been Vice-President for two or three years and General Manager for perhaps fifteen years.

I believe it to be a legitimate item of expense to a commission man to advertise to get shipments to his own firm. The stock yard company advertises in newspapers to secure shipments through Chicago stockyards; we advertise over the radio for the same purpose.

We use other means and methods of advertising; we send representatives to the country to solicit business to be shipped to the Union Stock Yards, Chicago. I consider the International Live Stock Exposition as one of the greatest advertisement mediums for the Chicago market. Live stock is solicited from coast to coast; advertising is carried only in live stock journals or live stock papers.

Cross examination:

The Chicago Live Stock Market is the largest in the world and it is generally understood that this is the principal live stock market in the country. It is necessary for individual firms doing business at Chicago to solicit in their behalf. The United States Government does not exercise [fol. 365] regulation and supervision over markets which are in active competition with the Union Stock Yards, Chicago. The markets referred to have been increasingly active in the past few years, the effect being to reduce the volume of business that is done at Chicago; the more the competition, the more difficult and expensive it is to overcome competition. In my opinion if there is a reduction in the allowance to live stock commission men in the money they may spend in getting and maintaining business at Chicago, the volume will of necessity continue to decrease. I know of no other means that is so effective as is the personal contact that the commission man has with his customer for getting and maintaining his business, for the reason that a commission man or a selling agency on the market has daily experience of his own knowledge that is of advantage to the shipper of live stock. I believe one could

go too far with specific solicitation; that is if one commission man went to Washington or California, it would be a very expensive thing for him to do, and that is the reason why the Yard Company tried to cover those far points for the market. I also believe that a live stock commission man could judge by his past experience as to whether there was sufficient business to warrant the expense of his personally going out as far as Washington or California; and further that he thought the commission man himself would be the best judge of what amount of solicitation he should do based on results from his previous experience. I believe that the commission men at Chicago are possessed of good [fol. 366] business judgment.

I find that there is a very considerable amount of competition existing between commission men engaged on the Chicago market. Each man is zealous to give the highest type of service that he can render to his customer.

Some firms draw their business from particular territories while other firms engaged on the market draw little from that territory but much from other territories. Conditions regarding solicitation vary greatly as between firms. An allowance to one firm for business getting and maintaining cannot be any criterion as to what would be reasonable with respect to another.

I do not believe that the average amount expended by all firms on the market for business getting and maintaining would be a fair criterion of what should be reasonable for all firms to spend per carload; that one firm might require much more than the average and perhaps some other firm would require less than the average. To illustrate: If a prominent man from Northern Illinois comes to Chicago and goes into the livestock commission business, and he has many friends and feeders in a congested district, he might be able to see them at a very small expense, get a large number of carloads which were evenly sent in by all of them throughout the year, making it a very effective sort of business, while another commission firm might have come from Montana or Wyoming and knows everybody out there, and most of his shipments come from that location. [fol. 367] That is far away and they might come at infrequent and irregular periods during the year, making it more difficult for him to handle them when they got here, and also he would have a much greater distance to go to reach

his customers personally than would be true in the case of the Illinois man. I think that in the case of a firm which spent $3.00 per car business getting and maintaining, a careful examination might develop that the $3.00 was a reasonable expenditure as contrasted with a firm that might have spent $5.00 per car for the same purpose, and that upon investigation it might develop that each amount would represent a reasonable expenditure.

If a liberal allowance is not made for business getting and maintaining that business might go to a point where some other solicitor or some other competitive point would have facilities or regulations where he could go out and get it. Where the business is lost to Chicago, the unit cost for that which remains would necessarily increase. The hog business reaching Chicago on a commission basis is dwindling and it is going east and some to interior packing points, causing a great reduction in the stock yards revenue as well as to commission men. If the Government were to reduce the allowance for business getting and maintaining from $4.50 per car to $1.50 to $2.00 per car, I believe the business would be further reduced, and create greater losses on the part of the commission men and the stock yards company.

[fol. 368] There is a charge that the railroad pays $1.00 per loading each carload. It is true that the size of the market at Chicago, the general reputation of the Chicago market, the reputation of the personnel, actually is a drawing factor throughout the country or throughout this shipping territory. The market would get considerable business whether they advertised or not or whether the commission man advertised or not, but not as much as at present, otherwise we wouldn't spend the money advertising.

With reference to advertising and soliciting each particular case is given special consideration and each advertisement that is placed is for a definite purpose. We try to do our advertising and soliciting at points where it will do the most good, instead of taking one percent, two percent, or five percent, and shooting it up into the air, we try to aim all of our advertising and all of our soliciting expense definitely with each project and each expenditure. I have no information with reference to what is paid for advertising and soliciting by any of the commission men.

The object and purpose of all a commission man's advertising and soliciting activities is to draw the business to his own firm.

It is true that the effect of the competition between commission men is not to increase the general market supply but merely to effect the competition between particular [fol. 369] market agencies. The commission man in his solicitation to get new business, must also, at the same time, keep in touch with his old customers to impress upon them that they can secure good service by sending it to his firm, that he will give it personal service, and he may tell them, and no doubt does, that it is necessary for him from time to time to keep up his fences, as it were, by still further impressing upon his customers either new or old, that he is able to give him valuable services at the market—you might say expert service—that is, he can give him definite details of what the market is doing, and what stock like his will bring if it comes to market, what he sold it for yesterday or last week, and what the market is today. He can give him definite and detailed information from his own knowledge that nobody else has.

One effect of extensive advertising and solicitation by the commission man is to increase competition between commission men, and it is also true that the effect of advertising by commission men is simply to persuade the farmer to ship to this particular commission man. As to whether I would oppose some limit upon the commission man spending money which must be paid for by the farmer where the only purpose is to persuade the farmer to ship to a particular, I do not know of any business wherein the man who has service or goods to offer is not permitted to use his own judgment in his methods of getting business so long as they are honorable and proper. But if a commission man reduces his advertising, perhaps he would be overlooked and he must keep up his front with his customers and try to get new ones. I would not agree that there must [fol. 370] be a limit somewhere no matter by whom imposed upon the amount that should be expended for advertising. I think, for instance, that last night in one of my papers here, one of the stores downtown—I have seen some of them have as high as eight pages of advertising in one issue. Now certainly he is only trying to get the State St. shoppers out to his store, if he can. But I do not know

whether he should be curtailed in an effort of that kind or not. Perhaps the effort, if he overreaches himself, will defeat his purpose and cost him more than he will get out of it, and then he will stop, say, of his own accord, and nobody will have to stop him. I do not believe that if carried to its ultimate conclusion, there would be no limit to the amount the firm would spend for advertising, and which the farmer would then pay in increased rates. If the commission man did not show intelligence in his advertising and spend so much money in advertising, that his reasonable compensation for the service he is performing would not pay that expense, he would soon stop it, of his own accord. His bank account would stop him.

Boiled down, it seems to me that it might be well left to their own judgment and to be proved up by the results they secured from it. Direct marketing has decreased the receipts at Chicago because customers east of Chicago that used to come to Chicago for their supplies are going to direct buying points. Advertising would have some effect upon direct marketing.

[fol. 371] Cross-examination:

In comparing conditions with reference to service required of commission men in 1933 as compared with 1922 when the arbitrators made their award as to rates to be charged at the Chicago market, it seems to me that there would be greater expense at this time, on account of the lessening of straight carload lots, and train lots,—that there are more small lots these days, and especially in the live stock that comes in trucks,—and my impression is that there has been an increase in wages that was made effective in 1923 and that we are still considerably above the level of wages that were paid at that time.

As to my opinion whether the rates which were found reasonable for the services performed by commission men in 1923 under existing conditions would be reasonable to charge for the same services today, it would seem to cause, as I have stated, the greater amount of work that must be done, and the greater expense of that work. What was fair at that time, leaving aside all other conditions, would be fair at this time on account of these specific items that I have mentioned; but there may be other surrounding conditions that I have not thought of.

The loss of business between the dates of 1923 and the present time would necessarily make the unit cost of handling greater, the outlay necessary to maintain the business, treating it from the standpoint of volume alone, [fol. 372] would, of necessity, make it more costly. The service is certainly more difficult to render today than it was in 1923 because of the broken lots in which the business is sold. The solicitation that is done and the advertising which is undertaken by the Yard Company is intended to bring business to the Chicago market without regard to any market agency engaged in business on the Chicago market; it is necessary for the yard company to remain absolutely neutral as to agencies that are on the market and I believe them capable of giving good service. While the Yard Company advertising may inure to the benefit of the industry as a whole, it would have little or no effect upon the particular business of the firm, if they did not continue the solicitation of business with the same intensity. There is and has been an effort made on the part of people engaged in business at Chicago to combat the increase of direct buying; that effort had not stopped this type of buying but it might have been greater if it had not been for the efforts made to stop it. I see no reason up to this time why the effort should be diminished or the expense decreased. The job is not yet done. In 1923 at the time the commission rates were fixed by arbitration, direct marketing was not a material factor, but has since become a very menacing one.

[fol. 373] Redirect examination:

Based upon commission charges of today and of 1932, the shipper is paying a greater proportion of the value of his live stock for commission charges than he was in 1923. I believe it would be good policy for a Chicago commission man to advertise in New Mexico, Washington, California, or many of the mountain states, because some of the commission men have customers, say, in Washington or Idaho, that at certain times of the year have livestock that will sell better on this market because the demand is here and he believes in telling the raiser of the live stock that if the raiser comes here the commission man can get a good price for his livestock, but he might do that at only a specific time of the year when he knew that sheep or lambs could sell to

advantage. He would not be likely to advertise all the year around.

F. E. MOLLIN, a witness called by the Government, testified as follows:

Direct examination:

I live in Denver, Colorado, and am Secretary of the American National Livestock Association, and have been for a little over four years. The association is a voluntary one of livestock producers, mostly cattle men, with principal membership in the states west of the Missouri River. [fol. 374] The membership is in three classes; we have the State associations affiliated with us in all the States where there are active associations, except in the State of Kansas, which is an independent organization, but works with us on traffic matters; we have many local associations scattered all through the west affiliated with us, and then we also have individual memberships running from small operators up to some of the largest cattle men in the West. My personal experience has been principally at the markets at Denver, Omaha and Chicago as live stock shipper and as Secretary of the American National. The American National has participated in many of the various rate hearings under the Packers and Stockyards Act and had some part in arranging or urging hearings to determine fair and reasonable charges at different times relating to both commission charges and stockyards charges. I have personally appeared and testified in various *various* rate cases, both live stock commission and stockyards charges; my association has not directed or authorized me to appear at this particular hearing—it is a standing policy of our association that we shall take part in these hearings, wherever possible, and I don't think, in a good many years, that our resolutions have failed to refer to the matter of marketing charges.

The witness was then permitted to read into the record over the objection of the respondent, the resolution of the American National Live Stock Association about this attitude, adopted at the convention January 1*3*, 13 and 14, 1933.

[fol. 375] "Resolution No. 6

Stock Yard Charges

"Whereas, During the year 1932 livestock prices sank even below the disastrously low levels of the year before, and far below pre-war levels; and

Whereas, Yardage rates are still being maintained on the wartime plane at most of the principal live stock markets, feed charges though reduced, are still out of line with the prices prevailing for feed commodities today; and commission rates at a few markets still need material revision; and

Whereas, A continuance of the present level of yardage and feed charges will make it mandatory upon the industry to seek other channels of marketing; therefore be it

Resolved, That we urge all agencies immediately to cooperate in extending to the industry the further help that is so long overdue and so badly needed, in the way of reduced marketing costs; and be it further

Resolved, That we express our appreciation of all the voluntary reductions that have been made."

I would like to say that I have many opportunities to come in contact with the producers of livestock in the West, not only at our own conventions but by attending other conventions and other meetings and I can assure you that the industry feels very strongly in need of reduced marketing charges and by that I mean commission charges and other marketing charges. So far as one of the objections made to the introduction of this resolution is concerned, I wish to say that the adoption of a resolution is the way in which I am authorized to take the position on certain matters and that the convention adopt a policy and I am supposed to conform to that policy.

The American National Livestock Association has taken a consistent position for many years in favor of reasonable [fol. 376] marketing charges. We have not played the game of blow hot and blow cold in regard to it. We do not say now that we want charges drastically reduced because of the depression, and we do not say we are willing to pay any kind of charge when we are getting a lot for our cattle. We have taken the position at all times in favor of reasonable charges. I will say that I know of no one in our

association who is not in favor of the position we are taking relative to commission charges and I can say further that men who a few years ago would not have given us any support in a proceeding of this kind are today solidly behind it.

I would like to say that the exceedingly low prices that we get for our livestock do not necessarily affect the cost of rendering the commission service. To that extent, it is our hard luck when our net returns are so low, but that is why I wanted to make it very plain that in this hearing we are asking for the establishment of a reasonable commission rate, not based on the low price we are receiving for our livestock. It is merely the fact that the price is so low that we urge haste in giving us what relief is possible.

I have received at my office during the recent months and in personal conversation with shippers a good many complaints about marketing charges, and it has been a very [fol. 377] common thing for these gentlemen to write or to tell me that it forces them to seek other ways of marketing their livestock.

Now, I don't say that that is narrowed to the matter of the commission rate, but I want to bring in a situation here of which the commission rate is an essential part. I can tell you some of our prominent shippers in Colorado who have formerly sent their livestock through the markets who last year sent them direct to feeders over in different parts of the east and one of the reasons they did so was because they were saving a commission charge and saving a yardage charge and saving something on the freight.

When we go into a hearing of this kind, or when we talk to commission men individually about commission rates, we are told that a saving of a few dollars a car is not going to save the livestock industry. When we talk to the stockyard officials and urge reduction in the yardage charge, we are told the same thing, and when we appeal to the railroads for lower railroad rates, we hear the same story. I had occasion this week to argue with officials of the Department of Argiculture relative to forest grazing fees, and I was urging a basic price that I thought would protect the interest of our western stockmen, and I was answered that I was taking a very narrow position and that it only amounted to $12 a permittee, the difference between what I asked and what they were willing to give

me, and that was not going to save the industry, but I want [fol. 378] to say it is the sum total of these charges that do amount to something to us, and that the stockmen are of sheer necessity today, paying more attention to the saving of even one dollar or two dollars a car than I have ever known them to before. It is not a matter of being narrow or anything of the kind. They have been obliged to cut their operating costs to the limit, and they feel it is just simply a matter of common justice that these men who sell our cattle and our other livestock and between whom there is the closest kind of a personal relation should make the same economies in the operation of their business that the stockmen have been forced to make in their operations.

I know of many men who thought they were fixed for life, who had been taking it comparatively easy, who have been obliged to discharge their foremen and move back on the ranch and work long hours, and they show the strain of that condition. We are just simply asking cooperation when we urge that in working out your new schedule that you be perfectly fair to the commission men and that you be perfectly fair to the industry. Furthermore, it is quite essential as a means of removing a discrimination between markets that commissions having been largely determined at the principal western markets, that matter should be hastened to a conclusion at the other markets.

Mr. Boyd referred to the arbitration case in which, of course, our Association was interested and in which I tes- [fol. 379] tified as a producer.

I would like to say that the result of that arbitration was a distinct disappointment to the livestock industry, that we know we could have secured lower commissions by direct negotiations. We had completed, practically, negotiations at least at the Omaha market where we could have saved several dollars a car compared with the arbitration award.

I simply mean to indicate that there are some practices that we think are unduly expensive and that as business has been driven away from the markets or has left the markets for whatever cause it becomes a physical impossibility for the industry to pay a commission rate that will support the number of firms and the number of employees that were required to do a much larger volume of business.

In regard to the practices, I would like to refer particu-

larly to the matter of advertising, soliciting, business-getting, examining of livestock, advising as to shipping, sorting and etc. I think that the greatest saving that you will be able to make very likely will come in that item. I have always taken the position that a reasonable amount should be allowed for that general combined purpose of advertising which it all boils down to in the end. Some of our people, some stockmen do not go that far and say that there should not be any allowance made. I have been willing that there should be a reasonable allowance, that the Secre- [fol. 380] tary should determine from examination of all the facts in the matter, and when the allowance has been made, I think it is immaterial to the livestock industry how the commission man spends it.

If he is allowed one dollar a car or $1.50 a car, he can spend it in mail advertising or in sending a solicitor out in the country, and so forth, but I think that system can be made entirely too expensive to the extent that it becomes simply a matter of trying to take the business away from another firm or from another market. It is of no real value to the industry, and I think it should be regulated in the common good.

I have had quite a little experience along that line when I was with Kent and Burke in Nebraska. Our ranches where we fed and fattened for the market were about 100 miles west of Omaha, and along in the late winter and early spring we had lots of solicitation from Chicago firms who were quite out in what we generally considered Omaha territory. We had occasional visit- at the ranches from Omaha commission men. We seldom, if ever, asked them to come. They usually came of their own accord. We were glad to see them, glad to show them the cattle, glad to take them around and tell them who had cattle in the neighborhood and introduce them, but when that kind of a service is expanded to the point that it is used as the base in making a commission rate more than is required in what I have referred to as an advertising fee, I think the majority of livestock producers are entirely willing to forego it.

[fol. 381] I have talked with large lamb feeders very recently about this matter; they ship to this market, and they say they are perfectly capable of sorting their own lambs and that the prime consideration today is to reduce com-

mission charges and they want to forego that service if that is one way to bring about a commission charge that they can afford to pay. In all that I have said, relative to economies, I think the same thing applies to the cooperative firms that does to the old line firms. I realize that the shippers to cooperatives have a little different interest in the matter. At the same time, I think that anybody can make better economies in their own operations if they are relieved of this unlimited competitive condition and that it will react to a net saving to the benefit of the whole industry. I know that Chicago solicitors come clear out into the territory close to Denver and I recall that there was an effort made at the Denver market a little time ago to limit solicitation, and that the cooperatives and the old line commission firms could not get together on the matter, because they felt that although the Denver firms lived up to their agreement, some of them had agencies on other markets and they could send solicitors from the other markets into territory tributary to Denver, and it is a system that has grown to be very very expensive. When there are many lambs coming to this market from northern Colorado and western Nebraska and those concentrated feeding areas, they actually have to shoo solicitors out of the chutes to load the sheep before they can get them loaded, there is such competition, sometimes six or eight people there at one place trying to get the business and that is not doing the industry a bit of good.

[fol. 382] I do not wish to attempt to make any specific recommendations as to rates, except to say that I believe the practice of a straight carload rate should be adhered to as has been followed at the other markets where decisions have been made, and I think that cattle and calves, as of one species, when unmixed with other stock, should be considered straight carloads, which I think is now the common practice. I have spent a great deal of time at various live stock markets, and have been on the Chicago market and seen sales made occasionally.

"Mr. Miles: I will ask you this: In your opinion, how many carloads of cattle should a salesman of ordinary efficiency sell in the course of a year? I want you to consider that there are good days and bad days, rainy days, sunshiny days, take it throughout a year. Just how many carloads

of cattle do you think a salesman should sell or could sell if he had all that he could do?

Mr. Boyd: I object to the question. The witness has not shown that he has ever sold any cattle on the Chicago market at any time as a salesman, and that it would be a mere opinion and have no binding effect upon these Respondents.

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Mr. Miles: Mr. Examiner, I think that if counsel will read the Omaha case again, he will see that the criterion is not what a man does do, but what he could do. I think the question is perfectly proper. The witness has testified that he has observed salesmen.

The Examiner: Objection overruled.

The Witness (continuing): Well, I never yet saw a cattle salesman that placed any particular limit on the number of cars that he could sell, if he had them to sell. I would, in answering the question, base my answer on a 200 selling-day year, which would be practically four days a week, and I [fol. 383] think that any salesman would say that he could sell at least ten cars of cattle on any day, if he could get them to sell, and that would be a minimum of two thousand cars a year applying to cattle.

Mr. Miles (continuing): Would you give us your same opinion as to calves, hogs and sheep?

Mr. Boyd: I move to strike the answer for the reason that what a salesman might say or what he will say during the process of this hearing, say about different things, that he believes that a salesman will say that he can sell ten carloads of cattle daily, there is no foundation for the reason indicated that any salesman has told him that on this market, nor has he given any consideration to the situation prevailing on this market today.

Mr. Miles (continuing): I will ask you, Mr. Mollin, if that is your opinion, that a man could, under the circumstances named, sell two thousand carloads a year.

A. Absolutely."

"Mr. Miles (continuing): Will you give us your opinion then as to selling hogs, sheep and calves?

A. I have no opinion as to sheep, because I do not pretend to be well-posted in regard to the handling of sheep, and I cannot say that I have ever had any great experience

in the handling of straight carloads of calves. It depends a little upon what you mean as calves. Of course, if you are thinking of calves coming in here as dairy calves, I do not know anything about it. If you are thinking of straight carloads of feeder calves from the West, which might run up to four hundred or five hundred pounds in weight, anywhere from three hundred to five hundred pounds, there would be no great difference in the number that a salesman could handle, if he had them to handle. It would be a matter of straight carloads. As to hogs, it is my opinion that possibly a salesman would have difficulty in handling quite as many as he would in cattle per day, for the reason that hogs are mostly individual carlots, whereas cattle often come in shipments that would range from one to ten carlots in a shipment or very frequently one to five carlots so that where you could not only sell, you might be clearing up five cars of cattle, while, with hogs, it would have to be practically every sale, an individual sale. To that extent, I would think it would be a pretty poor hog salesman that would say he could not sell ten cars of hogs in a day."

[fol. 384] I can only say that I think shippers go to a market, when they think it is in their interest to go to that market, when the charges are reasonable; and when they become convinced, for one reason or for various reasons, that it is not to their best interest to go to that market, they seek the other way of marketing their livestock.

The witness stated that he had not attempted to discuss the Chicago situation specifically with live stock shippers to the Chicago market.

I think I have made my position clear, that I have not attempted to discuss the Chicago situation specifically with shippers. I do not go into the question of individual markets. We are a general organization, and furthermore, I, as I said, have been in Washington almost constantly since early in February immediately following our Ogden convention, and I have not been to a single convention of livestock producers, because of my absence in Washington. I had to cancel two or three trips that I was supposed to take and I have not attempted to load up for this case. I am just telling you what our people think about the commission rates, and that applies to Chicago, applies to Denver, and any other market that the rates have not been reduced.

[fol. 385] "Mr. Boyd: Mr. Examiner, I would like to know who these people are that are doing the thinking; I would like to know who the shippers are that comprise his organization, that he thinks indicates that the Chicago rates are too high, and that is the question I ask the witness. He persists in dealing with this as a special composite view of shippers. I think if he has any, if he knows the name of any person, that he should be required to state it in response to my question.

The Examiner: As I understand it, Mr. Boyd, and apparently Government counsel puts the same interpretation upon it, that he cannot give the name of any specific shipper who has made complaint in regard to commission rates here at Chicago, and I believe Mr. Miles puts the same interpretation upon that. Is that right, Mr. Miles? All I want to do is to get the facts, as far as I am concerned.

Mr. Miles: The way I interpret it is just as the witness stated it and I would not want to interpret the witness' language."

"Mr. Boyd (continuing): When was the last time you were in the cattle pens at the Chicago stockyard?

A. Last December I guess.

Q. Did you observe livestock being sold by a salesman at that time?

A. No, sir.

Q. When was the last time you observed a salesman in the cattle alleys on the Chicago market?

A. I have not been active in the livestock business since 1928.

Q. And have you observed any sale or any transaction made by any salesman or any transfer of livestock on the Chicago market since 1928?

A. Yes, I have been in the yards since 1928 several times, but I have not learned anything that I did not know previously about it.

Q. Did you follow a salesman and observe his work at that time?

A. I didn't just exactly follow him around; I have been in the pens and seen him, seen some actual selling.

Q. What salesman were you with at that time?

[fol. 386] A. I was in numerous pens; I could not tell you just exactly who.

Q. Do you recall the work done by any particular salesman at that time?

A. It has been my practice, when I came here, to look up my old friends that we used to ship our cattle largely to—Rosenbaum Brothers and Company and Luke Conover of the National—I have dropped into their pens two or three times since I was with the Association, but I have not followed them around like a dog by any means.

Q. Upon what do you base your opinion that a livestock salesman can sell at the present time on the market ten carloads of cattle a day; just what factors do you take into consideration?

A. Well, I never saw any livestock salesman that could not sell ten cars of cattle in a day if he had them to sell. I have seen them sell so many more than that number of animals, on occasion, without apparently straining his ability, that I think I have been very reasonable stating it at ten cars a day.

Q. What salesman do you have in mind as selling ten cars a day?

A. Now?

Q. Yes.

A. I am testifying from my experience as to what I think they can do. I think any of them can sell ten cars a day if they can get them, that is my testimony.

Q. Are you familiar with the marketing situation at Chicago at the present time and the manner in which the livestock is received?

A. Well, I am familiar with the situation the way it was when I was shipping cattle here, and I do not assume that it is much different than it was then, but my testimony was based on my own experience and not on conditions today, but if you can show that conditions are vastly different, I presume that will be in the record.

Q. Have you been in the hog pens in Chicago since 1928?

[fol. 387] A. No, I never shipped very many hogs to Chicago. Our hogs mostly went to Omaha, just an occasional car.

Q. What is the per head rate for selling cattle at Chicago at the present time?

Mr. Miles: Mr. Examiner, that is a matter of record and the record speaks for itself.

The Examiner: Well, as I understand, he wants to find out how familiar the witness is with the general situation.

The Witness: I used to know pretty well, but——

Mr. Boyd (continuing): Well, can you tell, without an examination of the tariff?

A. No, I would not care to put it into the record, because I do not have occasion to refer to it.

Q. Do you know what the carload rate is in Chicago for selling straight cars of cattle and calves?

A. I do not at the present time. I have not made any study of it since I left Kent and Burke.

Q. Do you know what the rate is for selling hogs?

A. No, sir.

Q. But, still, you think the rate, whatever it may be, is too high?

A. I know approximately what the rates are, but I know that they are above the average of the markets where the rates have been adjusted, but I do think they are too high, and I am not going to guess at what they are and put it in the record wrong.

Q. How can you believe they are too high when you do not know what they are?

A. I have had occasion to study these rates, but I have a great many matters to attend to, Mr. Boyd, aside from commission rates: I have been dealing with a host of other matters in the last three months.

A. You understand that this situation, so far as these respondents are concerned, is one of great moment, vital to their existence?

[fol. 388] A. Yes, sir, and if they can justify the existing rates, we will accept them, and if they cannot, we want a reduction.

Q. But you come here and testify that you believe the rates should be revised downward, when you indicate to the Examiner that you do not know what the rates being charged are.

A. I do not know, to the penny, just how much your rates exceed the rates at the other markets where rates have been established on cattle at $15 to $15.50 per car, I know it is considerable above that.

Q. Do you know that the charge for selling cattle at Chicago is $1.00 per head?

A. No, sir.

Q. You do not know whether it is $1.00 or $1.10?

A. I know it is not $1.00 on the carload rate.

Q. Do you know what is is, then?

A. I have it right here, if you want it.

Q. But you do not know what it is?

A. I do not attempt to carry it in my head. I know that it is higher than it is at any other markets where the rates have been adjusted, substantially higher.

I have no information with reference to cost of rendering service at Chicago. It was not a question of how many firms made money but how many can be supported on the volume of business that is available.

"Q. You indicated that you thought that there might be too many livestock commission men engaged in business at Chicago—firms or something like that?

A. Well, I understand there are about the same number of firms as there were when you were getting more livestock. That is the extent of my information on the subject specifically, but generally speaking it is considered that the business is over-manned at Chicago and a good many other points.

[fol. 389] Q. What is your opinion?

A. Well, I have always felt that it was over-manned.

Q. Do you know how many livestock commission firms are engaged in business at Chicago?

A. I understand there is something like 120 registered.

Q. 120 firms selling livestock?

A. Yes, sir.

Q. Do you know what the volume is?

A. No, I haven't the figures in mind.

Q. Do you have the information as to any particular firm?

A. No, sir.

Q. But generally you think there are too many people in business?

A. That is the general impression. I have heard the commission men admit it themselves, maybe not in Chicago, but that is an accepted principle in the industry.

Q. Accepted by whom?

A. By the industry in general.

Q. What do you mean—"by the industry in general"?

A. Wherever you hear the matter discussed—I have never heard a commission man deny that there were too many of them in the business, but they seem to have been powerless to regulate it.

Q. Do you recall the recommendation made by the arbitrators and the statement made by the arbitrators at the

time they rendered the award touching upon that subject?

A. No, I do not.

Q. Is it your opinion, Mr. Mollin, do you agree with the arbitrators in the statement that 'It is the opinion of the arbitrators that market agencies which conduct a reason-
[fol. 390] ably efficient business should not be arbitrarily denied a reasonable margin of profit for the capital, responsibilities and risks involved?

A. A reasonable margin of profit——

Q. —for the capital, responsibilities and risks involved?

A. Well, I think I could sum up my position without going into detail and say that we are perfectly willing to have a reasonable commission charge established that takes in whatever are the proper factors in the establishment of a commission charge. I haven't heard a lot said about what profits or what you figure profits on. Some men are running a small business of their own and their profit is to draw a reasonable salary or drawing account, so I think the other covers the question of reasonable commission rate. I said I was in favor of that.

Q. The arbitrators state as a conclusion, make the following statement in their report: 'In reaching a conclusion as to what, in their judgment, will be a fair charge for the producer to pay and a fair compensation to the market agencies for the services rendered, the arbitrators have in mind that it is not within their province to pass on the question of whether a firm has a right to act as a market agency, but they have approached it from the standpoint that the compensation should be reasonably remunerative to those efficiently functioning as market agencies. It would not be to the advantage of the livestock producer to bring about arbitrarily such conditions as to cause necessary talent to seek a field for its services other than with a livestock market agency. It appears that the producer and the shipper should be the best judges as to the quality of service furnished them by the several market agencies and as to whether the service is satisfactory. It is entirely within the power of the patrons of the market to withhold patronage from those market agencies that fail to give satisfactory service. Herein lies an effective means, available to the shipper, of improving market services.' Do you subscribe to that opinion?

[fol. 391] A. Well, hearing it read rather hastily, I think I do.

A. Would you take and examine it?
A. I think the hub of it is—where does it start?
Q. Right here in the middle of page 9.

(Counsel for Respondents hands award to witness).

A. I think Mr. Boyd, the whole thing is contained in this sentence: 'But they have approached it from the standpoint that the compensation should be reasonably remunerative to those efficiently functioning as market agencies'—I think that is the hub of the whole thing. I think that is a reasonable statement.

Q. And you agree, I think, that the most efficient firm from the standpoint of the shipper or the man that has livestock to sell, may not be the man who has the largest volume of business?

A. Well, of course, I think the word 'efficient' there refers not only to the selling but also to the efficient operation of a unit having an efficient volume of business, as well as to the salesmanship. That is the way I understand the meaning of what you just read.

Q. You understand, of course, that that can only be limited by action of the shipper himself in the choice of his market agency?

A. Well, here is the way I understand that: I will grant that Mr. Conover, we will say, might have a big run and make a satisfactory sale, and some other salesman might have one-third as many and might get just as good a sale or might even get a nickel more in some instances. That is up and down one day with another, but it is my understanding that what the arbitrators had in mind was that even though that small firm might make just as good a sale as the larger firm, that in working out what is a reasonable commission charge, it has to be done on the basis of an efficient organization from the standpoint of handling a reasonable volume of business. We may have one firm out here handling two cars of cattle a week that may make a cracking good sale of those two cars of cattle, but you couldn't establish a commission charge high enough to give them pay for being in business a week. That is the way I understand the phraseology there that you have just read.

[fol. 392] Q. But the statement is to the effect that the shipper, after all, decides where the volume shall be?

A. Yes, sir.

Q. He makes the choice as to what firm to ship to and if there be too many, it is because the shipper chooses to patronize all of the firms that are here?

A. Too many what?

Q. Too many firms, if there be too many firms it is because they are patronized by the shippers, they make the selection?

A. Yes, but I think it is quite evident that if there are people here that have got a very small business and if they elect to hang on, and the present commission rate or any reasonable established rate doesn't give them a fair profit, that is something that just can't be helped. If they elect to stay in business without an efficient volume to operate on, nothing can be done about it.

Q. If the record shall show, or should show and will show that there are large firms with large volume doing what you might term, which you would term yourself an efficient business, and the results of those operations do not result in any profit or in a small profit, at least not an unreasonable profit, would you still believe that the rates should be reduced?

A. I would if there are items of expense in there that are not justifiable.

Q. Now, with reference to advertising, you indicated that your were of the opinion that—you expressed an opinion about advertising, soliciting business, advising as to shipping and sorting, and so forth; what limitations do you think ought to be placed on those activities?

A. I think I gave that in my direct statement, Mr. Boyd, the limitation should be through the amount that the Secretary allows as a reasonable amount to be spent in that fashion.

Q. Per car?

A. That is the way he works it out, on a per car basis.

Q. How would you go about working it out? You have expressed an opinion as to the amount, you have said $1.00 or $1.50?

[fol. 393] A. I think anybody who would work it out would have to make a study of your market.

Q. Upon what do you base your opinion that $1.00 or $1.50 would be ample for the purpose?

A. I didn't say it would be ample. I just used that as a reference. I didn't say it was too much or too little.

Q. Would you think that $3.00 a car would be too much or too little?

A. I would think it would be too much.

Q. For what purpose?

A. I don't see where it benefits the industry. In other words you want to take $3.00 out of every car we send you and apply it not to the profit of your concern, but to spend for a service that I know a great many stockmen do not want money spent for. That is why I say I am not attempting to say just what is reasonable, but I don't see——

Q. You say you know a good many stockmen who don't want that done?

A. Yes, sir.

Q. Can you name them for me?

A. I did name some of them. Perhaps I referred to Mr. Farr as having discussed that matter with him, and it has been the hub of all of these commission rate hearings because that is where the biggest saving is possible, and we don't see why you shouldn't be willing to cooperate and cut down that cost and give us the benefit of reduced commissions. We need it.

Q. Do you know what the amount spent at Chicago is for that purpose?

A. No, I am perfectly willing to let this record stand for itself on all these things.

Q. But you are not willing to agree that the commission men are exercising good, sound business judgment in the expenditures that they make in serving their patrons through the matter of sorting or otherwise or in furnishing market information or things of that nature?

[fol. 394] A. Well, Mr. Boyd, I would say that I don't see that Firm No. 1 sending a man out to Ft. Edward, Nebraska, today to solicit shipments, to be followed by a man from Firm No. 2 tomorrow, each one of them trying to get the business, is rendering the shipper out there any particular service. Now, if you want to spend part of your profits or your whole advertising allowance or whatever it is in that fashion, I haven't any objection, but I think that business can be overdone and I know it is badly overdone at many times.

Q. Don't you believe that instead of basing your opinion on an isolated case, or where it happens that we have people, salesmen, or solicitors during a period of heavy ship-

ping that are in that district trying to get the business and maintain their own business, that a careful examination as to the reasons for their presence there and the effect of that solicitation should somewhat govern the opinion of the person finding an amount reasonable or unreasonable?

A. Well, I think the spirit of the times is to cut out what might be referred to as cut-throat competition in every line of industry. That is very apparent in legislation that has been proposed in Washington, too, in the settlement of your milk strike here in Chicago by Government intervention. It does not help the industry a bit to have Chicago commission men out there in eastern Nebraska trying to persuade these people to not ship to Omaha, and the Omaha commission men have to send their men out to persuade them that Omaha is the best market. I think I take a liberal view of that compared to what some people do, and when I say that I am really in favor of a reasonable charge and I am not attempting to say what that reasonable charge should be, I am willing to let you make your record on it and your audit will show how much money you are spending and the Secretary will determine as to whether that is justified.

Q. What I am attempting to get into the record is to try to confine your testimony to its proper limits, so when the Secretary reads it he will understand what you mean. I gather you have criticized the expenditure for advertising. Do you know what advertising they do at Chicago?

A. I don't think that statement was justified by anything I said. Again I will leave the matter to the record. I came here to testify to the interests of the livestock industry in this proceeding and in this general matter, and we are not attempting to say what the rates shall be. We want the Secretary to know we are interested, and we want the record to be complete, and then we are going to abide by the decision.

[fol. 395] Q. You haven't registered a complaint with the Department of Agriculture since 1923, your association has not, has it?

A. No, sir. We have the Packers and Stockyards Act, but we have been hoping to get around to you long before, but it hasn't been very fast.

Q. But when it was first organized you did file a complaint?

A. Yes, sir.

Q. And that was adjusted as I have indicated by arbitration and since that time you have filed no formal complaint with the department?

A. We have filed no formal complaint with the Department simply because we have been assured that these matters would be handled just as expeditiously as possible, starting with the Omaha case, but we couldn't do anything until we got the Supreme Court decision on that case.

Q. I understood you to say they didn't start the Omaha case but the Omaha people started it themselves.

A. I have no doubt something would have been started the way things have gone, but we didn't have to, the commission men started it.

Q. Do you believe that the rates of the commission should be based upon market prices received for livestock?

A. No, sir.

Q. What weight do you think should be given to those prices?

A. Very little, if any.

Q. Then you don't contend that by reason—and your association in the adoption of this resolution does not contend that Chicago rates should be arbitrarily reduced merely because the market levels have been somewhat less than previously, at the time the rates went into effect?

A. No, sir, I think I made my previous statements quite clear on that.

Q. And you do not think also that they would be justified [fol. 396] in raising their rates because the prices advanced?

A. No, sir.

Q. And that if the livestock commission men at Chicago sold livestock at approximately twice the value per hundred weight after the award was made as compared with the prices that existed at that time, that there would not have been justification for raising the rate?

A. Not unless the factors that make up the commission rates justified it.

—. Now, if a livestock commission firm, any you are familiar with, in the conduct of its business—in the first place, do you believe that livestock commission men are capable at Chicago of operating a business efficiently and have sound judgment with reference to whether they shall expend certain money for certain purposes?

A. Well, that is a pretty broad question. There are a lot of your commission men that I don't know, and I think that people are often forced to do things under competitive conditions that are not entirely sound, and it is my hope that this decision will in a measure be beneficial to the commission men in removing some unduly competitive conditions.

Q. Do you believe that such a restriction should be made upon the amount of money that might be expended in business getting and maintaining as to prevent livestock commission men engaged in business here spending a sufficient amount of money to combat certain types of marketing that in their opinion are not beneficial to the shipper?

A. Well, I don't believe that you could take in as part of your base for determining a fair commission charge any sum of money that you might want to spend to combat direct marketing.

Q. Do you know whether or not livestock commission men have curtailed their expenses at Chicago during the past two or three years?

A. No, I haven't examined the audit at all.

Q. Do you know whether they have already made effective these economies that you indicate should be made?

[fol. 397] A. No, sir, the record will show.

Q. Do you know that there is a limitation placed upon the amount of solicitation that any firm may do at the Chicago market.

A. By registering out, you mean?

A. Yes.

A. I don't know. I know there was such at Omaha. There may be at Chicago, I am not informed.

Q. Well, you do understand that that is an attempt to place reasonable limitation upon the right of a man to solicit business?

A. That would limit the activity, yes, sir, to a certain extent. I don't know what the limit is though, if you have such a limit.

Q. You mentioned Mr. Conover a moment ago. Would you think that Mr. Conover would exercise sound judgment in the attempt to maintain his business on a proper, sound basis by retaining the shippers that he has and getting new ones, or do you think that he would spend an exorbitant sum of money for that operation?

A. I think if everybody else was spending an exorbitant

sum of money, that he would have no option in the matter. He would have to try to meet the competition.

Q. And do you believe that his judgment would be sound with reference to the amount that he would spend for that purpose, so far as his particular expenditures were concerned?

A. Why, I have a very high regard for Mr. Conover. I think he would do the best he could in view of the conditions that existed."

Cross-examination:

"Mr. Boyd: I would like to ask one question, Mr. Mollin, let us assume that the statement of the arbitrator is correct, and when the rate, which is being charged, is assessed against the owner of livestock, that such owner or seller [fol. 398] will not pay too much for the services to be rendered and that the commission man will not receive too much in the application of that tariff. If that condition is true, and this tariff was put into effect in September, 1923, will you be good enough to relate what reasons you have to advance for an assumption that the rate should be reduced, taking into consideration the fact that you have indicated that you did not believe that rates for this service should be based upon the price of livestock, and the fact that you believe that the rate which is determined should be a fair one.

The Witness: Did you say in 1923 or 1928?

Mr. Boyd: No, the tariff became effective at Chicago following the recommendation of the arbitrators, and its approval by the Acting Secretary of Agriculture, September 15, 1923, and has since been in effect.

A. Well, we consider that the Packers and Stockyards Administration has facilities to go into these matters, perhaps even in greater detail than was the case in the arbitration award. As I stated, we were very much disappointed in that award, but we are perfectly willing to allow this new investigation, to determine whether the award was correct or whether it was not correct, and we are going to abide by the decision until conditions are materially changed.

Q. Did you understand that I asked you to relate, if you can, the reasons which you have for believing that the rate, if fair in 1923, under then existing conditions and being

charged throughout the years since that time, and livestock advanced very materially, what reason would you have for believing that if they were equitable and reasonable in 1923 and the years thereafter, that there should be a reduction now?

Mr. Miles: Will the reporter read the question, please?

(Whereupon the question was read.)

Mr. Miles: 'If fair.' This witness has testified that he did not think the rates were fair. They were not satisfied with them.

The Witness: Well, there has been a considerable change in economic conditions that might affect the cost of rendering service. There might have been some change in the matter of competitive conditions that would affect the expenses of the operating firms. I think that this investiga- [fol. 399] tion should bring out all the facts in the case.

Mr. Boyd (continuing): I will ask you, Mr. Mollin, to assume that the cost of doing business per unit handled at Chicago, has increased substantially since the award was made applicable to Chicago, and that the unit cost of handling livestock today is very considerably greater than it was in 1923, due to a more complex condition on the market, and if you believe, taking those circumstances into consideration, that *if* the rate was fair at that time, it would certain- be fair now?

A. Well, I would feel this way about it, Mr. Boyd, that a schedule which might have been fair in 1923 might need revision now, due to changes that are developing in the marketing conditions. For instance, I have talked with men who have been in the administration who have been interested in fixing these rates and they think that it is quite a problem of fixing the rate high enough on these small drive-in-shipments or consignments to properly repay the commission men. I think, of course, there has got to be a separation between a drive-in-schedule and a flat carload schedule, and that conditions that might have altered relative to the handling of drive-ins and still not have substantially altered relative to the handling of full carload shipments, with which, of course, our people are most concerned.

I have also heard that where they do have the higher rates, I am not sure just how it applies at Chicago, but

where they have a higher per head rate on drive-ins, that some of the people who truck in the equivalent of a carload shipment feel they are discriminated against when they pay more than what would be a flat carload rate, but it seems to me that it is a matter for solution in the truck-in schedule and not a matter that should require the upsetting or the changing of he carload schedule as such."

[fol. 400] EUGENE M. HUGHES, a witness called by the Government testified as follows:

Direct examination:

I live at 7622 Phillips Avenue, Chicago, and am Secretary of The Chicago Live Stock Exchange; have occupied that position for seventeen years. The object of The Chicago Live Stock Exchange is:

"The object for which it is formed is to establish and maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to provide for the speedy adjustment of all business disputes between its members; to facilitate the receiving and distributing of livestock, as well as to provide for and maintain a rigid inspection thereof, thereby guarding against the sale or use of unsound or unhealthly meats; and generally to secure to its members the benefits of cooperation in the furtherance of their legitimate pursuits."

The memberships in The Chicago Live Stock Exchange are held by individuals, and the Exchange publishes and observes certain rules and by-laws. (The witness identified Government Exhibit No. 14, being the rules and by-laws of The Chicago Live Stock Exchange for the year 1929, consisting of 62 numbered pages and also certain inserts.)

Exhibit 14 constitutes the rules and by-laws of the Exchange as of that date. The duties of the Secretary are to attend meetings, keep records of their meetings, and also to take care and preserve their books and records, and such other duties as naturally fall upon the Secretary.

[fol. 401] Any person of good character and standing engaged in the livestock commission business at Chicago Union Stock Yards, may become a member provided he can meet the requirements. It is necessary to purchase a membership in order to become a member, and it may be purchased from the Exchange or some other member desiring to transfer his membership. Everyone engaged on the market is not a member of the Exchange; no person in business on the market necessarily has to be a member unless it is his desire. There is nothing in the rules compelling commission men to be members. If salesmen act for a firm which is affiliated with the Live Stock Exchange, that salesman must be a member.

Unless owners are exempted under Rule 25 they must be members of the Exchange. Certain activities are carried on by the Exchange in behalf of its members or its affiliated organizations at Chicago. Some of these activities are a system of hog dockage, which requires an inspector at each scale in the hog alley, together with the chief inspector who has charge of all the scale inspections. They are employed for the purpose of docking hogs that are sold on the market by members of the Exchange to buyers on the market, for the purpose of establishing whether or not there should be any allowance made for piggy sows or stags. The dockage activities are under the direction of the Hog Inspection Committee. Government Exhibit No. 14 contains the provisions governing the conduct of the hog inspection. It is not a part of the rules, but under the [fol. 402] rules and by-laws of the Exchange the Board of Directors established the system and lay down such rules and regulations as they deem necessary. This service has been offered to all agencies operating on the Chicago market, but all agencies have not availed themselves of the opportunity. The charge paid for the service in the case of carloads is 25¢ per car, and in the case of truck shipments or less than carload shipments, a charge of one cent per head up to 25¢, thereafter no charge. The charge is assessed against the shipper or the owner of the hogs. This service is extended to traders and they pay on a weight basis—25¢ for every 17,000 pounds. In the case of any dispute as to dockage, declared by the inspector, then it is referred to the chief inspector and in the event that the buyer and seller is not satisfied with the chief inspec-

tor's decision, it can then be referred to a committee of arbitration.

The committee is constituted under the authority of the Board of Directors of the Exchange. The charge for hog dockage is made against all hogs arriving at the market which are consigned to commission firms who have availed themselves of the opportunity afforded by the dockage system.

The Exchange engages in the activity of broadcasting market reports over station WLS twice each day; Mr. Poole does the broadcasting. It is supported by an assessment against the various firms, the basis of which is 10¢ per car for all cars which they handle during the month, [fol. 403] incoming business only. The broadcasting is confined strictly to market information,—there is no advertising or no propaganda broadcast. Only one order buyer is now a member of the Live Stock Exchange.

The Exchange, in cooperation with the State of Illinois, handles the inspection and tagging of reactors and suspect cattle. The State of Illinois does the physical work in the yards of tagging the cattle and the Exchange does the clerical work and reporting the disposition of the animal to the commission firm, who, in turn reports to the country. There is a charge of 10¢ per head to cover the expense of tags, printing and other service in connection with it. The charge is made by the Commission firm, paid to the Exchange and collected from the shipper. The Clearing House which is maintained in the Chicago market is not under the supervision of the Exchange, but is handled by Mr. Cranston and maintained by a monthly rental against each commission firm. This service is in no way connected with the Exchange, it being my understanding that the Clearing House is a private enterprise carried on by Mr. Cranston.

The Exchange maintains a claim department for the service of handling loss and damage claims for shippers against railroad companies on consignments of livestock to and from the market, which is supported by a charge of 15 per cent for the collection of the claims, and in the event that claims are sued on there is a charge of 33⅓ per cent on the amount recovered. The claim department is handled under the direction of the officers of the Exchange, or the Board of Directors. The Exchange firms

[fol. 404] do not handle their own claim service. It is under the supervision of H. R. Park. The Chicago Live Stock Exchange does not interest itself in an active way in livestock sanitary regulations or livestock promotion work at the present time; that was discontinued about 2 and a half years ago.

The Exchange has an insurance policy covering all livestock except horses and mules, while on the confines of the Union Stockyard and Transit Company; and it is a blanket coverage covering all livestock consigned to member firms against fire, or mixing occasioned by fire. It is paid for by an assessment against the shipper collected by the commission firm. The traders contribute a part of the premium as do the packers.

The Live Stock Exchange collects the funds for the benefit of the National Live Stock and Meat Board which is a charge of 25¢ per car which was requested by numerous livestock shippers, and is covered by Rule 42 of the Exchange. The Exchange assesses its members for funds to support general activities, and the expense is equal to all members. All of the privileges and rights which are attached to a membership are covered by the rules and regulations. The Chicago Live Stock Exchange, through Mr. Park, traffic manager, participates in matters on cases involving transportation charges, and the Exchange does not realize anything with respect to the outcome of these transportation matters. The money expended incident to this rate proceeding out of 1932 funds has not been reflected in the audit.

[fol. 405] The Chicago Live Stock Exchange has between 440 and 450 memberships, which is less than they have had. I do not remember offhand how the number compares with 1931, but I think it would not be materially different, perhaps eight or ten members fewer in 1931 than in 1933.

The memberships have been decreasing a little each year. The memberships assessment was $40.00 per member during 1932. The assessment was about the same in 1931.

(Government Exhibit No. 14, being the Rules and Bylaws of the Chicago Live Stock Exchange, was received in evidence.)

The Chicago Live Stock Exchange does not engage either in the buying or the selling of livestock on a commission basis.

Mr. Gerald J. Svoboda, a witness called by the Government, testified as follows:

Direct examination:

I live in St. Louis, Missouri and am a senior accountant employed by the Packers and Stockyards Division of the Bureau of Animal Industry, U. S. Department of Agriculture and have been so employed for the past ten years.
[fol. 406] I have done various kinds of accounting work for the Government in connection with the Stockyards rate case, trade practices and general investigations and on commission rate cases.

Reported on the assignment for Chicago for auditing the accounts of respondents in this case on September 15, 1932 and completed my assignment on April 9, 1933; in doing so I employed 37 people including myself and Mr. Bachmann. Of the 37, fourteen were temporary clerks that were hired to assist in preparing the statistical data for this case. There were five other accountants working with me in the preparation of the data for use in this case. I was working under the direct supervision of John J. Bachmann, chief accountant for the Packers and Stockyards Administration.

I have before me my blue audit for firm No. 1. On the first sheet, second item, the first item is commission—selling, followed by a figure. That is the ordinary selling done by a commission man. The next item is marked "Selling service—hogs". The difference between the two items is—that is the amount of commission that they receive for selling another firm's another party's hogs. It is not strictly commission like you would say in the first line. "Commission selling" is for selling their own consignments and where it is marked "selling service" that is selling for another person. The "commissions paid, selling service" is of the same nature as "commissions paid, selling service received" only it just works the other way; some other [fol. 407] firm sold the livestock for this firm.

"Mr. Miles: On this firm No. 1, will you please mark that Exhibit 15-1; in other words, gentlemen, I propose to number both the instructions as to the auditor and each and all of the blue audits as No. 15 and then the dash 1 will differentiate."

On first column of the second page, appears the word "straight"; under that is cattle, ditto, and then hogs, ditto. Against the word "cattle" is S. O. and also P. O. "Straight" means straight cars, either containing all cattle or all hogs or all sheep, but containing one species only,—one species of livestock. Calves are included in the word "cattle". You find that under "cars", the third section. If we have ten cattle and ten calves, that would be classified under the second section, "Mixed No. 1". "Cattle S. O." means single ownership, that is, owned by one shipper only. "P. O." stands for plural ownership, a consignment owned by more than one shipper. If ten cattle were owned by ten different individuals but shipped in by one association; if they were handled as a single ownership consignment, that is, the single ownership rate applied, we handle it as a single owner,—as one owner. If a specific account sale were not asked for by each owner who shipped in that association load, we would treat it as a single ownership. Each employee had a copy of the tariff. I have reference, say, to a carload of hogs. They would not make any pro-ration, and you could not tell whether it was owned by just one or more owners, but could tell from the application of the tariff, that is the [fol. 408] $14.00 or $15.00, whether it was handled as a single ownership consignment, and we considered it as such in the tabulation. We went according to the account sales at the time. We used the tariff in determining whether they were single or plural ownership. Of course, in cattle, it was a whole lot easier, because they show the brands on the account sales. "S. D." under the word "cars" means single deck, and "D. D." means double deck.

The next column "head" indicates the number of head, and the next one indicates the number of owners. "Account sales" means the number of account sales that were issued. One account sale to each owner. The number of drafts indicates the way they were weighed over the scales at the market, the number weighed at a single time over

one scale. In all of the blue audits we have followed the same method.

Taking the next item, which is marked "mixed" then there is a sign for number "Mixed No. 1"; under that "Cattle, Plural Ownership, Calves, Plural Ownership"; under that classification Mixed No. 1 covers cars containing cattle and calves only, and Mixed No. 2 represents any combination representing cattle and hogs or cattle, hogs and sheep, or represents cars arriving at the yards containing more than one species, except cattle and calves, which are classified as Mixed No. 1. The next item is "truck" and it indicates in the first column the number of dollars received as commissions for selling cattle arriving by truck, calves arriving by truck, and so forth.

[fol. 409] Under the next is the word "Speculator"; that represents sales made for yard dealers or traders on the yards. That balances with the amount set up on the first page on Exhibit C. Referring to the next page, called "Schedule", the caption "Owners No. 1 Selling—Cattle 12 months" and then the number of dollars; that is a statement of salaries, using the code as to owners or employees, whichever they might be, and shows the major classification as to whether they were cattle salesmen, hog salesmen, the number of months worked, and the amount of compensation received.

Under No. 1, selling,—cattle, that indicates that No. 1 is a salesman by some name who is an owner of a firm, and that he was at work for 12 months. The total compensation for one year is given. The next item "non-owners with the figure 3, yarding, extra, all species"; that represents extra service that is hired in the yards to help with the yarding. In commissions paid, opposite the fourth item, that is simply where they employed another firm or man to sell for them. The index key which can be used by some one using the record to ascertain who No. 1 salesman was, and who No. 2 salesman was, etc. is shown in the auditor's work papers only.

With reference to the salary questionnaires, we gave the basic information to Mr. Mudd, who was consulting accountant for the Exchange, and with this information he distributed those questionnaries among the commission [fol. 410] firms and secured the distribution of each individual's or owner's time. On the questionnaire we may

learn who No. 1 was; that is shown on the questionnaire and is also in the working papers. All the forms follow the one I have described; that is the procedure is the same all the way through.

Reference to Firm No. 1, the blue audit for that firm, there was no balance sheet because that firm cleared its business through another firm and the settlement was made either at the end of each week or at the end of the month, so there would be no receivable accounts payable of any kind. They would not have any assets and they would have no liabilities. Where there is no balance sheet the same explanation would apply. With reference to Firm No. 81, the first item is marked "Assets, current" which is the value of things that they have on hand, which are generally called assets.

Under investments we have the item of "stocks"—that is the amount shown on Firm No. 81's book as being invested in various kinds of stock outside the livestock industry. That is not exactly true in every case. We show the nature of the investment in the work sheet and the audit work paper shows the detail of all the investments. "Investment in Stocks"—under that caption we have set up a certain number of dollars as being the value; that is the value for those stocks as shown by the book. Firm No. 81 carries those stocks at that value on their records; this is usually the purchase price or the cost of these bonds at the time they were acquired.

[fol. 411] The blue audit shows the value of furniture and fixtures as it appears on the books of the concern. The caption "Liabilities and Net Worth, Current Proceeds, Total Assets" means the proceeds of livestock picked up on the yards, or the owners of which are unknown at the time and that money is held until the owner is identified or until he presents a claim. "Notes Payable—Other" means money that they have borrowed. The word "other" means other than related strictly to the commission business. In other words, in this particular instance, it represents a loan that they have made from the bank. The money borrowed from the bank was used in the business and should be considered as part of their business, but the classification is used to distinguish between transactions between customers and between others. Under accounts payable "Trade" are items of freight, yardage and items

that arose from strictly trading transactions. The word "officers" and "other" means the amount due to the officers from the firm,—it could be salaries or most anything. The item "Net Worth" is the value as shown on the books. Exhibit A is a balance sheet as of January 1st, at the beginning of the period, and Exhibit B is the balance sheet at the close of the period of December 31. Page 3, called Exhibit C, are items taken from the books without adjustment except where records were out of line.

[fol. 412] We delivered copies of the blue audit to the Secretaries of the two Exchanges, giving two copies of each firm's audit report with a request that they be distributed to the various firms. They were delivered the latter part of February, 1933. I delivered two copies of the audits covering the cooperative firms direct. The work sheets were all used as the basis for the preparation of the blue audit reports.

(Government Exhibit- No. 15, and 15-1, with the numerous sub-numbers, being the working instructions of auditors and the blue audit reports covering each of the firms under investigation was received in evidence, Government Exhibit No. 16, commonly referred to as the work sheets, supporting the blue audit reports, was received in evidence.)

Mr. Andrew A. Olson, a witness called by the Government, testified as follows:

Direct examination:

I reside in Chicago, Illinois and am Secretary of the Traders Live Stock Exchange and have been so employed for ten years. The Exchange (Traders) was organized with a view to promote and protect the interest of the members of this Exchange (Traders) and all others concerned in the buying and selling of live stock at the Union Stock Yards, in the City of Chicago, to establish uniformity in the customs and usages of trade at said market, to simplify busi- [fol. 413] ness transactions, to give responsibility and good credit to the members of this Exchange, to inculcate and enforce correct and high moral principles in the transaction of business among its members, and also to inspire

confidence in the minds of all persons, not members of this Exchange, in the business methods and integrity of the members of this Exchange in their dealings in this market, the members of the Chicago Traders Live Stock Exchange have adopted these rules and by-laws. The Traders Live Stock Exchange is incorporated under the laws of the State of Illinois.

Mr. Michael Joseph Sheridan, a witness called by the Government, testified as follows:

Direct examination:

I live in Chicago, Illinois, and am employed at the Union Stock Yards Company as a live stock handler, work for anyone who needs my service doing what is called extra yard work, driving livestock about the stockyards from the unloading chutes to the pens of the commission firms or from commission firms' pens to scales. Am paid $10.00 a day for a full day when I work and have been employed about the stockyards for about 20 years. The work that I do is called "tripper" or extra man. Stand around the Bulletin Board near the unloading chutes until someone needs my services. The longest distance from the unloading chutes to the pens of commission firms would be about three quarters of a mile. Handle cattle and hogs only, ar- [fol. 414] riving either by rail or truck. In driving cattle or hogs from the unloading chutes to the pens of the commission firms, they would be driven over a dock which is an overhead viaduct used for the purpose of driving cattle from the chutes to the pens of the commission firms, and if the docks were clear, not being used by other commission firms in the handling of cattle, or hogs, it takes from the chutes to the pens of the Producers Commission Company, about three-quarters of a mile,—about 45 minutes. In doing this I might have the assistance of a man or might not. The docks are equipped with gates at intervals and livestock is moved from gate to gate much the same as in the case of boats going through locks in a canal. The livestock is handled so as to prevent them from coming into contact with other livestock and becoming mixed. If, in one car, there arrived four bunches of cattle owned by four differ-

ent men, there being five cattle to a bunch, but all consigned to one commission man, and the commission man employed me to drive the four bunches, they generally have marks identifying each owner's cattle, or they have clips for that purpose, in which case all the cattle are taken over to the commission men's pens at one time, but if they are not marked for identification, the four bunches are taken separately unless the shipper is present and he can pick them out when they reach the commission men's pens. If they were not marked for identification or could not be separated for ownership at the pens, the four bunches would have to be driven separately and treated as four separate [fol. 415] carloads from a driving standpoint. If the shipment consisted of cattle and hogs, I would have to take the cattle separately to the pens, and the hogs separately to the pens. The stockyards company generally yards all the sheep which arrive at the Stockyards. Between the hours of six and nine o'clock in the morning, with receipts of about 18,000 head of cattle, it would take about two hours to drive cattle from the unloading chutes to the Producers' pens, and if the docks were clear, it would take around 45 minutes. It would not take much longer to drive four loads than one load if they did not have to be kept separate. It would take about one and a half hours with the docks clear if the four loads had to be kept separate as to ownership.

It would take ten or fifteen minutes to drive cattle from the unloading chutes to the pens of the National Commission Co. which pens are close to the unloading docks on Platform 9 or 10.

I am paid $1.50 a trip whether I drive one animal or one load of animals, a short distance or a long distance from the chutes.

Mr. V. G. Cranston, a witness called by the Government, testified as follows:

Direct examination:

I live in Chicago and am manager of the Stock Yards Clearing House, and have been so employed since March, [fol. 416] 1911. I supply messenger service, deliver weights

of live stock to commission firms, and collect for the same. The messenger boys go around to the commission firms and pick up the bills, present the bills to the purchaser, collect the money or check for the same and return them to the offices of the commission firms.

All commission firms, traders and buyers, order buyers and packers use this service on the basis of about $10.00 per month. Messengers make about fifteen to seventeen trips a day to the offices of the subscribers to this service for the purpose of picking up bills and returning checks. Maintain no permanent record of the business which passes through the Clearing House. The majority of the business is handled through the Clearing House, after two o'clock. The bulk of the checks are not returned in time for deposit on the day of sale.

Mr. Cory C. Wood, a witness called by the Government, testified as follows:

I operate a livestock checking service. We get the record of the train number, the platform, the railroad, and if the train has been called from what we call the pulpit over there, as they call the waybills, one after another, we designate the time, otherwise, it is written from the bills of the Yard Company, copied from these waybills by six o'clock in the morning. In addition to the original part of the card, as described, we have the shippers name and his car num- [fol. 417] ber, and we designate the chute that the stock is unloaded in and the number of head of cattle, hogs and sheep, and cripples and dead that have come out of that car. The card is then distributed to the box which is somewhat like a postoffice, and the yard boys come in and if there is a mixed load of cattle and hogs in one car, one man might sign for the cattle at the top, and the next man that comes in and sees that the hogs are not moved, would sign his name there and the yard boys then drive the live stock to the pens.

This card is used to inform the yard employees of the various firms what live stock has been unloaded and where it may be found, and when it is taken charge of by one employee, he signs the card in order to prevent duplication

of effort and to allow livestock to be promptly moved from the unloading chutes to the sales pens. I have been performing this service for fifteen years and only four or five firms in the entire stockyard do not avail themselves of this service. My charge is paid on the basis of the volume of business handled for each firm.

Mr. John Thomas Griffin, a witness called by the Government, testified as follows:

Direct examination:

I reside at 4229 Lowe Avenue in Chicago and am a super-
[fol. 418] visor of weighing for the Union Stock Yards Company and have been so employed for six years. Various commission firms and traders pay me for the service which I perform. Not all of the commission firms or traders use my service; they pay from $3.00 to $5.00 per week. I have been working at the stockyards for 21 years as yardman and have been working as weighing supervisor for six years. It is my duty to see that the scale is balanced properly and to help sort the hogs or grade them as they go on the scales. I allot turns to the employees of various commission firms as to the time they may weigh. Ordinarily I call to the firms, first come first served, or if they are real busy I use an alphabetical system and call the firms in alphabetical order, and allow each firm to weigh eight drafts on the large scale and 20 drafts on the small scale. This allows every firm the same opportunity to weigh the same amount of hogs, it avoids arguments and keep things moving in harmony.

Cross-examination:

The work which I perform facilitates the movement of livestock over the scales, prevents delays in alleys and shrinkages and things of that sort that grow out of delay in weighing. I am registered under the Packers and Stockyards Act as "Supervisor of Weighing."

[fol. 419] Mr. Gene McAdams, a witness called by the Government testified as follows:

Direct examination:

I reside in Chicago, Illinois, and am a cattle salesman for John Clay & Co. and have been employed for over 21 years; started in as a messenger boy, did a little office work, yard work. Did general work for about two years; the next step was sorting cattle; worked in the butcher department, branding department, fat cattle department and feeder department and was brought up in the cattle business under the men in charge of these various departments. I have sorted and shipped cattle, bought a few cattle, for about five or six years; after that I bought and shipped cattle for the firm, did the actual buying on orders for John Clay & Co. for their customers, and then for a time, about thirty days out of each year, I would assist in selling. In the years 1922 and 1923, I had two cattle buyers working under me filling orders. After I had trained men under me who could displace me in buying cattle, I began in the selling end. I have been selling cattle exclusively for eleven years at Chicago for John Clay & Co. I sold butcher stuff off and on up until 1922 and began selling steers regularly in 1922. Butcher stuff consists of she-stuff, cows or heifers. On the Chicago market the steer salesmen do not as a rule sell fat heifers, although there are times when fat heifers sell for a higher price than fat steers. Calves are classified by themselves.

[ol. 420] In classing cattle as a salesman, I have feeder cattle, several different kinds of bulls, veal calves, stock calves, different grades and weights of fat steers, different classes of yearlings; also have different classes of cows. There are many days when cattle receipts will run as many different ways as classes that it is hard to put one man on just one class of cattle. I have four to five cattle salesmen. I am what is known as a steer salesman and act as the head salesman, and I and another salesman spend all of our time selling steers. There is another man who assists in selling steers. This third salesman is a fiill-in man and is used wherever he is needed. He could be, if necessary, used as a yardman. We have a head butcher man and we have his assistants. This man acts in the capacity of head of the butcher department, selling and directing the selling of butcher stuff. Man Number 5, shown on the blue audit, is a fill-in man to assist either the steer alley or the butcher

alley; the two butcher men sell the butcher stuff;—cows, heifers or calves. Bulls could be sold by either one of the butcher salesmen or the man we use to fill in. The receipts to be sorted by all of the salesmen, butcher stuff, is handled and sold in the butcher alley. Stock steers would be sold either in the steer alley or the butcher alley, and stock calves would be handled in the same way. The four or five salesmen will pass judgment on a particular lot of cattle as to which division they should be sold in. I have been on [fol. 421] the Chicago Stockyards for approximately seven years. In general selling, there has been quite a change in recent years. In testifying I have reference to the business of John Clay & Co. as I cannot give an intelligent answer regarding the general business of other firms. Compared to seven years ago, there are a lot of cattle received which come in smaller lots than seven years ago. Our larger feeders have either gone out of business or else they have cut the business down to a very much small amount today than seven years ago, and, another thing, we received a fair proportion of our business by truck and some people market a carload of stuff by bringing in four or five head at a time.

If John Clay & Co. could sell straight carloads of cattle in one bunch they could do it much cheaper than trying to sell four or five cattle at a time. Receiving them in that way necessitates much more labor in taking the stuff from the chutes, also selling them, and also in the office, making out accounts of sales and keeping posted and everything else that is connected with the business. Compared with seven or eight years ago, there were more shipped in at one time by one owner than at the present time.

A man who owns several loads of cattle today would rather distribute this stuff over two or three markets, because the owner figures if he gets on a bad market with the whole shipment he is ruined and if he can separate the [fol. 422] shipment out, spread it out, he figures he would have a better average. The range business does not come by truck except in rare cases. Our range business is broken up just as much as our native business because we have shipments where we had 37 head of cattle belonging to 35 or 36 different owners, so you can see that there would be a shipment cut up into that many different lots. People want their stuff to show their own marks because there is not any one man that has the same mark as his neighbor.

Sometimes he wants it sold separately. Back in the early days it used to be in Omaha we would get trains of cattle from one company and today we will get a load of cattle that will have several different owners in it. During the year we had more mixed shipments than we have ever had since being in business. I do not know the largest number of full carload shipments made by one owner at one time during the year 1932. It was necessary to employ trippers to help our yard man. I believe we get more shipments of one car than two car shipments belonging to one owner. The truck business of John Clay & Co. is getting larger each year.

The stocker and feeder buyer start out at 8 o'clock and the fat cattle buyers at 9 o'clock. There is no rule, it is merely a practice. I arrive at the stockyards on some Monday mornings at from 6 to 6:30; in the summer and early fall I come down around 6 o'clock. At 6 o'clock when we come down we meet our shippers, we have telegrams. [fol. 423] The shippers advise how they would like to have their animals fed before they are sold, either corn or alfalfa hay. I get a line on the business that we expect while at the office, then go out into the stockyards and start lining the stuff up, feeding and watering and sorting. Before going to the yards, I send telegrams to prospective shippers what and when to ship. Before coming to the office I have telephone calls from the country wanting to know whether live stock should be shipped for sale on the following day, and I get calls at night seeking advice as to what live stock should be shipped and when to ship it.

The Chicago market provides an outlet for all live stock that has ever been shipped to us. I frequently to hold live stock over. As a general rule live stock does not have to be carried over, but I have held over 850 cattle. The cattle arriving for sale are fed as soon as the Yard Company's wagon comes to the alley to provide the feed. Our employees feed and water the cattle. The owner shipping the livestock must be known at the time of feeding in order that the owner may be charged for the amount received. Our yardmen go to the chutes and receive the livestock from the yard company, look over the livestock to see that it is not bruised and crippled, and keep a record of any damaged animal. They also keep a careful count so as to prevent being charged with more than received. This is a

responsibility assumed by the commission company in receiving live stock.

[fol. 424] Damaged or crippled live stock is sold by the salesman as quickly as possible at the best price obtainable to protect the interest of the shipper. If an animal dies in the sales pen, the rendering company is notified to come and haul it away. After live stock is fed and watered, it is then sorted. Our salesmen sort the live stock and the yardmen hold the gate. The purpose of sorting is to fix the different consignments so they will appeal to the buyer and also sort them in different lots so they will command the highest prices. We sort them in many different ways on different days. It would take me a half day to tell you why I sort a certain drove of cattle a certain way. You don't know what the demand will be. You have got to shape them for demand, for appearance, and for weight. There are so many different things, it would be hard for the average onlooker to know what they are being sorted for.

A load of cattle might arrive that will be so nearly uniform that no sorting will be necessary. I do not know what percent of livestock would not need sorting. The percent would be very small. We sort continually all day long, shaping them for the demand, and we may have one load of cattle in a pen when a buyer comes along and says there are four or five that he will buy in the load. Maybe they are nearly all alike, but still in order to get the most money for them it is advisable to take out the five he will buy. For instance, a load of cattle coming from a grower that [fol. 425] will run all the way from calves to four-year old cattle. We have four calves, four yearlings, four two year olds, four three-year olds and four four-year olds, they may run half steers and half heifers. In order to dispose of that consignment, possibly we have to sort them in about eight or nine different lots, so it depends upon the consignment whether it is a uniform consignment or whether it is a mixed consignment.

Some shippers want live stock cut up in small bunches; some want them sold in one bunch. It is not just to please the salesman, but you have to please the buyer and shipper as well. Shippers frequently give instructions to sell cattle in one bunch, but I will have to give an illustration. I had a man yesterday who had 10 cattle coming through.

He wanted them sold in three bunches, cut into three bunches and bid on three. Then, he wanted me to throw them together and sell them. Then I sold them and he didn't want them to go through and I had to get them back. Then he wanted them divided and wanted them sold that way and I did that and sold them. After they are sorted, they have to be shown before you can sell them. In selling cattle at Chicago, the buyers seek the sellers and the sellers seek the buyers. It is done both ways. If the buyer wants them badly he will hunt up the salesman; and if not, the salesman will hunt up the buyer. That condition de-
[fol. 426] pends on the condition of the market. The witness was asked how he would show an ordinary load of cattle, assuming the weights to be around 1000 to 1200 pounds per head, good to choice, all the same breed—what is called an average market. I would show the load of cattle to every buyer, order buyer and independent buyer on the yards that I could interest. I might show them myself and I might have a couple of other men working on them, showing them also.

I desire to describe a straight load of cattle arriving by rail on the day I am testifying. I had a straight load of cattle, part of them butcher stuff, part of them steers. The cattle were brought from the chutes by our yardmen. I sorted off two head of cows, a couple of heifers and one bull and took off a couple of light steers. I would call it a straight load of cattle from one shipper. He was then asked to describe a straight load of one class of cattle. He said that he had such a load on that day and that they were sorted into three lots and finally sold in two lots. That load consisted of twenty-three head of cattle. I started to show the load about 8:30 and the last of the cattle were sold at about 1:30 P. M. Two other salesmen and I had been working on them, and if we had tried to count up the number of buyers that had been shown that one load of cattle there would probably have been twenty buyers that the animals were shown to. Today the market was considered a slow market for that kind of cattle.

[fol. 427] I had a straight carload of cattle of the same kind and euality shipped by one owner on the day before. This load consisted of cattle that were most attractive, most in demand, the easiest to sell. For that reason I got to the scale first. The first load of such cattle went over the scales

yesterday at 10:30 or a quarter to eleven. I had been working on them all the time. Started to show the cattle before nine o'clock. During this period I had also been working on other cattle but buyers generally were not interested in the others. This one load of cattle interested all the buyers. They were desirable and sold within a dime of the top of the market and the buyers generally were sparring to see who would get them. One salesman gave everyone a chance to buy these cattle before they were sold and they were shown several times before it was decided which man to sell them to and the price to sell them at. I personally had shown the load to four buyers, and am not certain as to the number of buyers our other salesmen had shown them to.

Q. In your judgment, in your opinion, you think it would require an hour and a half to make a sale of one straight carload of cattle.

The Witness: Why, in all fairness to the producers of this load of livestock I think that we should take from one to three hours in selling these cattle and we do not want to overlook the fact that sometimes it takes 11 to 12 months to make a load of cattle, and the shipper comes in here and naturally he does not want his efforts disposed of in 10 [fol. 428] or 15 minutes and he knows we cannot show these cattle to all the buyers on the yards in that length of time, and he naturally wants these cattle to go full route, so that every buyer that might be interested in them will get a chance to look at them and have a chance to buy them, and, I think, in all fairness to everybody concerned, both buyers and the owner, that these cattle should have plenty of time to be shown before selling.

Based upon my experience, I regard the latter transaction as an average or typical transaction. The witness was asked how many bunches of cattle he would be working on at the same time, and the witness said it would depend upon the day, on how many loads of cattle they had for sale and also upon whether or not the buyers would be interested in anything else for sale. If I had five other loads of cattle besides the one described to be sold by our salesmen it would hardly be possible to sell these five loads to the one buyer because the packers will have one buyer buy one class and another buyer another class, and it is not a gen-

eral thing to get five loads from five different parties that will run just alike so that you can interest one buyer in all of them. If it is possible to sell to one packing house, you may be able to, because today they buy them like they buy a lunch; they do not buy them in big bunches as they used to.

[fol. 429] Q. Now, let us assume that you have your five carloads in five different pens, all being of the kind that you sell. We may assume that we will call in the Armour buyer and the Swift buyer, and we will say three other buyers; may they not all be there at one and the same minute, each looking at the kind he himself wants to buy?

A. No.

Q. Just why not?

A. Well, they have a gentlemen's agreement, that when one fellow is in the alley looking, unless he tells them that he is not interested in the balance of the stuff, he has the privilege of going through the different lots. I have had a buyer stay in one pen for as much as one and one-half hours at one time and then not buy the car of cattle.

Q. And it is also true that a buyer has also bought from you, personally, in less than three minutes, is it not?

A. No, I cannot twist them that fast any more at all.

Q. Then I will say five minutes, on an actual sale?

A. No, I don't think I can sell them that fast for several reasons. These shippers do not like the cattle sold to the first man. In order to hold your business, you cannot sell stuff that way. These fellows want to see the whole show when they come here, they want to get everything that is here and they want everybody to have a look at them. Then the cattle look different at different times, these cattle don't look so good in the morning; at noon they might fill up and look better. We have all these things to take into consideration.

There may be only one buyer for a desirable load of cattle even though we may have four or five loads of cattle. As an example: A father and his son shipped in two loads of cattle. One load is billed in the son's name, one in the father's name, both the same kind of cattle. The commission man figured these two loads belonged as they were billed, one to the father and one to the son. Sold one load

on the market after working on them a couple of hours in [fol. 430] a little while. The father came in and was told

"Your boy is a better feeder than you are. I have sold your boy's load of cattle and I cannot get anybody to buy your load of cattle within one-half dollar of the price I sold your boy's for."

This gentleman said:

"Why, those two loads of cattle belonged to me. I billed one load in the boy's name and one in my name so as to get a pass. They are identically the same."

Well, he said:

"I sold that load of cattle to Eddie Hess, and after he bought them he bid me one-half dollar a hundred less on this load of cattle."

Well, this particular commission man worked all day on that load of cattle and then carried them over until the next day and finally sold them. It is not usual to carry cattle over. I have had to carry over several hundred of them many and many a night. We try to sell them the day they arrive, but some days we cannot give them away. I suppose we get 75 to 85 per cent of them sold the first day they arrive if the shipper will let them go. There have been days I have had to hold over 75 per cent. It depends upon the market and the conditions prevailing. I sell all kinds of steers. I sell steers to all buyers that buy the particular class which I have to sell. The number of buyers you would show cattle to would depend upon what class you are discussing. All buyers do not buy cattle every day. There is not a buyer buying steers on the Chicago market who does not at some time buy the class of steers I described as being desirable.

[fol. 431] As to how many there are, it might be a speculator, order buyer, shipper, packer, but they don't all have orders for the same thing the same day. In response to the question—Would there be ten buyers who would want the desirable cattle described? My answer is that I would have to give the number of all the steer buyers in the yards because for a desirable load of cattle, every steer buyer in the yards would be a buyer some day of the week or some

time during the day. If you know how many buyers or packers you have and how many traders and order buyers there are, you will be able to get the number of buyers that would buy that load of cattle. I would not say there were 75, there would possibly be 45 that would buy a desirable load of cattle. I have shown them to more than 40 and did not get them sold. It is also true that I would sometimes sell to the first, second or third in rare cases, not very often.

"Q. Let us get back to this same old proposition and see if we can get it clarified. I have taken this five carlot proposition of being the kind that you would sell on the same day and ask whether you think it would take five times as long to sell five carlots as it does to sell one carlot.

The Witness: It took us from 8 o'clock this morning, we started at 6 o'clock until 2:30 to sell four loads today, if that will give you an idea."

And it took our whole crew to sell the four cars, including myself. It would be heard for me to answer a question as to what is a typical day because no two days are alike. I alone sold four loads of cattle in a day during 1932. I have sold four loads of cattle in 1933 in one day. I have sold [fol. 432] four carloads of cattle different days. In order to determine from the record how many cattle any of the salesmen sold for John Clay & Co. on any particular day it would be necessary to go over the records and figure out which salesmen sold the different lots and the same would apply to 1932.

"Q. Now, is the question clear, that in order for you to find the greatest number of carlots of cattle that you have personally sold in a day, it could be obtained from the records of your company, but it would take months to do it, is that a correct statement?

A. Yes, sir, because we have so many salesmen working on them. We would have to figure out which one finally closed the deal on them. I might in the wind-up close the deal on a load of cattle, and there may have been three of our other men showing these cattle several times, before I finally sold them.

Q. Do you think that question could not be answered?

A. I don't think so.

Q. Without a long search, and you are unable to tell us,

then, for any year in the past seven years, the greatest number of carloads sold in a single day by you?

A. Not since I have been in Chicago. We have not had any large shipments since I have been here.

Q. Can you approximate or state exactly the shortest time in which you have sold one carload of cattle during this calendar year of 1933 or 1932, I am taking it as a sale by you alone?

A. I don't just recollect what would be the shortest time I have taken to sell one car of cattle.

Q. Could you give us the longest time that you have spent on one carlot?

A. One carload alone?

Q. Yes, sir.

[fol. 433] A. Well, I held one lot of cattle 15 days. The shipper told me to hold them until their tails dropped off before he would take that price for them. Then I think we shipped them back home. We did not even sell them. The owner wanted more than they were worth and he felt the buyers were trying to buy them for less than they were worth.

Witness temporarily excused.

Mr. Herman Mack, a witness called by the Government testified as follows:

Direct examination:

I live in Chicago and am cashier for John Clay & Co. Have worked for John Clay for about fifteen years, mostly as cashier. During that time I worked for a year and a half as bill clerk. Before going to work for John Clay, was a railroad clerk. My duties as cashier consist of remitting proceeds of account of sales and of various other things. H. H. Sutherland is office manager for John Clay and Mr. Sutherland's duties are confined to the Chicago branch of the John Clay house. Says that John Clay & Co. maintains other branches in other cities. I have four employees working directly under my supervision. Peter Marriott is a bookkeeper, William Powers, bill clerk; Charles Gasser, bill clerk; and George Moore, Collection clerk. I look after

various things, including remitting on account of sales the proceeds to the shippers, looking over bank accounts, figuring tickets, answering correspondence. I have nothing to [fol. 434] do with the advertising policy of the concern. Mr. Marriott is the bookkeeper, and is employed to keep books and make up purchase bills, invoices, write checks for proceeds. The bill clerks do the billing, write up the freight, check the freight and yardage and feed accounts, and so forth. The collection clerk gets in the collections and writes them up. The collections cover the sales made to packers and other individuals.

The office hours for my employees and myself start at 8 o'clock and sometimes run between nine and ten o'clock at night, but on the longest days we work past midnight, but we never get off before six o'clock in the evening; we work until ten or eleven o'clock two days a week, probably eight or nine two days a week, and probably get out the other days around six.

Mr. Harold Summ[illegible]s, a witness called by the Government testified as follows:

Direct examination:

I reside at 8156 Kingston Avenue, Chicago, and am butcher salesman for John Clay & Co. at Chicago. Began working with John Clay & Co. about thirteen and one half years ago as a yard man. Worked as yard man for three and a half years, after that went inspecting live stock loans for John Clay & Co. for about a year and a half. Then went [fol. 435] to Omaha buying feeder cattle and was there about three years. Was at St. Paul buying feeder cattle for six months and have been in Chicago for about six years. John Clay & Co. has four and sometimes five cattle salesmen including myself. The extra salesman's name is Johnson. Johnson sells a few odd steers and buys a few cattle. I would class him as sort of an assistant salesman. The amount of time that he would spend in selling is the unusual day,—not every day. I would say that he sells more than one day a week. Mr. Johnson sells a few odd steers, —odd in number, one or two head. Butcher stuff covers all she-stuff, bulls and calves, but would not include steers. Would include stockers and feeders in the she-line.

In the first place, a cattle salesman has to know livestock,—the different grades of cattle,—and he must know how to sort cattle. He must know how to trade. By trading I mean actual selling. I would say that a man in order to become a salesman, ought to spend at least three or four years in the yards as a yardman, or as a salesman; and he must know the correct time that cattle ought to be watered, fed and made ready for the buyers, whether he thinks it is going to be a good market or going to be a slow market. That is a sort of brief resumé of about what I think a salesman should do.

John Clay has two steer salesmen and two butcher salesmen. The steer salesmen are McAdams and White, the [fol. 436] butcher salesmen, the witness and DuPlan. A straight load of butcher stuff would have to be sorted into anything between 8 and 12 bunches. Taking thirty head of cattle, and ten head of calves in one load, I would first sort off the calves and then sort off the bulls; then the cows would have to be sorted up according to flesh and according to weight. As to flesh, they would be sorted as to whether they were thin or fat,—or whether they were good for feeding purposes, and in the latter case they would be classed as feeders. We would also grade for quality and weight. As to the ten calves, they would have to be sorted, the veal calves would have to be sorted from the feeders, if there were any feeder calves in the consignment. Then we would have to sort the light veals from the heavy veals. In straight veal calves, a carload, you would have to sort off the best veals, then the good grade of veal, and then any plain calves which might be in the load. There would be at least four sorts on them.

I had some livestock to sell yesterday. I arrived at the office at 6:30 and went to the alley about ten minutes to seven. I went into our butcher alley and yarded butcher stuff that we had, then when the yardmen came over about ten or fifteen minutes after seven, started sorting the butcher stuff. The cattle were in the alley, but not in the particular pens when I arrived at the salespen. The sorting took a considerable time,—then the cattle had to be watered before they were sold, then I started showing the [fol. 437] cattle and later on sold them. The yardmen hold the gate but do not sort the cattle. The day before John Clay & Co. had two loads of butcher stuff made up of cows,

heifers, bulls and calves. The first load sorted consisted of calves, bulls and heifers, and everything in the butcher line. Each kind was put into a pen by itself. The calves were sorted two different ways as to flesh, then the thin calves were taken off. There were ten calves in one bunch and six in the other. We then took out the bulls. There were two bulls. The bulls were sold separately. The next class we took were the thin cows. There were four in one bunch and three in the other. In addition we had several truck shipments. We received four truck loads the day before. There were three in two trucks and four in the two others. There were three thin cows in one truck which required no sorting. There were also four thin cows in another truck. We sorted these into two bunches. They were different kinds of cows. The other two trucks were yearlings, three in one truck and four in the other. They did not require sorting. They were of good quality and in good flesh. The market yesterday was slow.

In selling cattle I know the prices of the previous day and price cattle higher the next day hoping the market will be higher. What I accept for cattle would depend on the receipts on the yards and other markets. Usually I know [fol. 438] the receipts on the yards and other markets. I know the receipts at other markets before sales are actually made; the seller always prices the cattle to the buyer.

John Clay & Co. has approximately 50 pens that are used for the yarding of cows, and butcher stuff. I use five to twelve pens for yarding calves. The majority of western calves are usually sold as feeders. For shipping calves I use approximately 8 or 9 pens, depending upon the day.

In selling shipping calves, it depends upon the day, the kind of market and whether the buyer seeks the seller or the seller seeks the buyer. If the market is very active, the salesman usually tries two or three buyers out, probably four, before calves are sold. It is a rule that only one buyer is permitted to look at livestock at the same time at Chicago, that is, of the kind that is traded on by that one man. Buyers usually look at all of the animals they are interested in before they make an offer or a bid on the ones that they want. It would take fifteen minutes to show one buyer one pen of calves. It is not usual to have one buyer coming in right after the other. It might be an hour or a half hour apart. We have three buyers for packer calves,

the three big buyers, but Armour & Company buy most of the calves. Ordinarily the big packers come through the alley some time during the morning. In a case where it is a very bad market, we have to go out and find the buyers. It [fol. 439] is not the general rule for us to seek out the buyers, I mean every day. In showing four pens of calves, if the first packer buyer that looks at them makes a bid and it is accepted, the bid is final, but it is very seldom that we accept the first bid from the packer buyer. He usually bids on each pen as he goes along. If he only wanted two pens and makes a bid on the first two, he would not make a bid on the remaining two. And it is the same thing with the city butcher.

Feeder calves are sold a little different than veal calves because we usually have a large number of country buyers buying feeder calves. By country buyers, I mean the actual farmer. I do not remember how many calves I sold farmers direct.

To show four pens of calves to one feeder buyer, if he is interested in buying calves and is bidding on all four pens, it might take an hour to an hour and a half. It depends on whether or not he is interested. If not interested, it may take fifteen minutes or thirty minutes. If the market is slow we usually have to go and look for these feeder buyers. If it is active, you usually find them coming around the alley every little while. I would say there are eight or nine city butchers that would be buying from me. Whichever buyer comes along I would show him the calves, the kind of calves that he would buy.

[fol. 440] To sell the calves consigned to the John Clay firm there is one more butcher salesman besides myself that also sells butcher cattle. We do not show cattle to but one buyer at a time. As long as one buyer is trading on a pen of cattle, we do not show them to any other potential buyer. We had 25 calves consigned to us on Monday; it is not a small run for this time of year. It is very light in the fall because we handle a very large number of range calves in the fall of the year.

We had about 20 loads of butcher stuff run a little better than a third of a car, about 35 to the car, which would be about 700 head. Given a copy of the actual account sales covering transactions from Monday's business, and after examining the-, I would say that it looks like my statement

is probably large on that; it looks like around 400 head or a little better. There were about ten loads of straight yearling heifers and the balance was made up of cows and a few bulls. Yearling heifers run about 25 head to the car. I sold about half of them and the butcher salesman sold the other half. The last sale was made at ten minutes to three in the afternoon. The other salesman made his last sale about the same time.

Before the sale can be made, the salesman has to know the actual worth of the cattle, and in that way must determine in his own mind whether to accept the offer or to hold for a better price.

[fol. 441] I do country soliciting and go out the latter part of the week, mostly Friday morning and occasionally Thursday afternoon, and come back Saturday night as a rule. All of the salesmen for John Clay & Co. solicit, but they would not be all out at the same time, there is always at least one steer salesman and one butcher salesman at the stockyards. In cattle there is usually a five day market, although some cattle are sold on Saturday morning,—very few, however. There are different buyers for different grades of cattle and the packer buyers look only at the kind and quality of live stock that they specialize in. The packer buyers for the large packers are divided up among the various divisions of the Chicago yards, and the sales pens for cattle are separate from hogs, and butcher stock is kept separate from steers. It takes about 20 minutes to drive cattle from the truck division to the butcher pens of John Clay. The buyers prefer to buy cattle that have been shipped by rail rather than those which have been trucked in. Rail cattle dress better than those that have arrived by truck.

If the buyer thinks the cattle offered to them are "seconds", sometimes they won't purchase them. They figure they are probably poor or something like that. The dressing percentage is not the same. We let the packers use their own judgment whether they are "seconds" or fresh cattle. Packers ask occasionally and in that case the [fol. 442] facts are always given to the packer. When the facts are given that the cattle are "seconds", occasionally it happens that the packers may be less interested, but not very often. I would not say that it takes a greater length of time to sell a given number of traders' stuff than it does

first hand live stock, all other things being equal. Whether you would sell it quickly depends on the market.

"Q. Now, we have assumed it is done the same day?

A. I think you will find that you can sell traders' cattle practically the same, lots of times, as you can the fresh cattle.

Q. That is an unusual condition, is it not?

A. Well, it is unusual, yes."

I cannot tell the greatest number of trader cattle that I had sold in a single day during 1932 or 1933. I believe that the largest number of trader cattle I sold in one day would be about 65 head. I could not give exact figures as to the number of fresh cattle I sold in a day. It is only natural that an individual sell more cattle in the fall of the year than he does at the season about which I am testifying. There are several Mondays of big days in the fall of the year when we are liable to have thirty or forty loads of butcher stuff and I may sell, personally, about half of those. Then again, I may sell less than half. It all [fol. 443] depends upon what kind of a market. Some of the but-her stuff comes from the corn belt and some from the range country in the fall. I would say that it runs about half and half. I have never sold fat steers for John Clay & Co. Canners and cutters are just like any other kind of butcher stuff,—sometimes they are hard to sell and some days they are easy to sell. There is usually a little better demand for canners and cutters over a period of time than for other classes of cattle. Sometimes they are easier to sell than fat cattle; it depends upon whether the market is good or bad. On a bad market, having all kinds of cattle, it would be easier to sell canners and cutters than it would any other class. There is more sorting and handling of calves and other classes of cows than there is to canners and cutters as a rule. It depends upon whether the market demand is for heavy cutters or light cutters, or heavy canners or light canners. We would sort them accordingly. I cannot tell correctly the number of bull buyers at the Chicago market. Order buyers, packer buyers and yard traders buy bulls. They are sold to packers in small lots. Any of the big or small packers will buy bulls. In the fall of the year when range cattle are coming, we may receive 30 bulls in a day. As to whether bulls

are classed as being difficult to sell or easy to sell, that depends on the market. Lots of times there is a good demand for bologna bulls and not for fat bulls, or it might be the other way around. Usually I sell the bulls that [fol. 444] arrive each day. There is no one buyer on the yards that takes more of the bulls than another buyer.

"Q. Now, Mr. Summers, I would like to ask you this: Take in the butcher stuff that comes to you, I want you to assume now that you have just all that you can handle, I am not interested in what you actually do handle, but what you can handle, assuming that you had all that you could sell. I am going to consider now the days as they run throughout the year, good days and bad days, rain and snow, heat and cold, slow and fast; in your opinion, how many carloads could you sell. Now is the question clear, or will you have it read to the witness after counsel's objection is considered.

Mr. Boyd: I object to the question; first, on the ground that it is incompetent, irrevelant and immaterial, that counsel now seeks to procure from this witness an estimate as to his capacity, without reference to the day of the year, the condition of the market, the presence of buyers, the assistance that he will have in the handling of his cattle. He says he has four salesmen, whether or not there is a bank moratorium in existence, whether or not the various conditions—the witness testified that there is not a typical day in the marketing of cattle at Chicago—no two days alike, I think was his statement; that to procure an answer from this witness would be of no value whatever in fixing a rate, and that it is the evident intention, based upon past experience of counsel, to attempt to get from this witness a statement as to his maximum capacity under the most favorable circumstances perhaps, and then use it as the capacity that he should have in order to become an efficient cattle salesman, and, upon that kind of a computation ultimately to arrive at what should be the proportion of the compensation received by salesmen, in order to arrive at an item of salesmanship, and I protest against this witness being permitted to answer that question, if he can answer such a question. I submit that the question is not susceptible of a fair answer.

[fol. 445] Mr. O'Bryan: I wish to adopt Mr. Boyd's ob-

jection, and, further, object on the ground that it is based on assumptions which the evidence already in this record shows do not, cannot and will not exist at the Chicago market, and that — is absolutely irrelevant and immaterial for this record to show an opinion of a witness as to facts which cannot, do not and will not exist.

Mr. Miles: Will the reporter read the question?

(Whereupon the question was read by the reporter as follows:)

Now, Mr. Summers, I would like to ask you this: take in the butcher stuff that comes to you, I want you to assume now that you have just all that you can handle, I am not interested in what you actually do handle, but what you can handle, assuming that you had all that you could sell. I am going to consider now the days as they run throughout the year, goods days, and bad days, rain and snow, heat and cold, slow and fast; in your opinion, how many carloads could you sell?

Mr. Miles: —*in a year*

(Continuing.) I recognize now that the time, 'in a year' was not the question, and hence Mr. Boyd's objection in part, that I was limiting that to a particular day was valid and well taken. The other objection, that a part of it was based upon the fact that a single day was used, now, that the question has been amended correctly to read, 'in a year's time' and since the question involves conditions as they exist over the period of one year, I submit that the question is fair.

Mr. O'Bryan: I wish to make the same objection to that further objection that it is impossible for the witness to answer the question unless he is able to know, of his own knowledge, as a fact, all of the conditions which existed day by day during the year.

Mr. Boyd: Do I understand, Mr. Miles, that the year that you refer to projects itself into the future, or is the past year,—is that any given year? Is the witness to unlike to know what that is. You say 'during a year'.

Mr. Miles: We will permit the witness to project himself derstand, so that I may raise further objection, I would into the future.

[fol. 446] Mr. Boyd: Now, if the witness is dealing with the future, I submit that this witness, nor no other witness

can attempt to estimate the receipts of his firm or any other firm, the receipts at this market or any other market, the prices, the tendencies of buyers, under conditions that have been changing as rapidly as they have in the past three months, and that it would be utterly impossible, it would be the rankest sort of a guess, could not serve any useful purpose whatever. Now, I have no idea what the witness is going to answer or what he is about to say, but I submit to the Examiner that it is not a fair question to ask this man what he can do in a year when it presupposes, as it does, an average of conditions that there is no prophet existing could give you.

Mr. Miles: Now, Mr. Examiner, the counselor has injected into this a statement that the witness cannot know with reference to receipts. I submit that is not material. I am assuming that the receipts are here in unlimited quantities.

Mr. Boyd: He assumes a condition that has not and will not prevail.

Mr. Miles: I will state further that it is not material whether they prevail or not in view of the law laid down in the Omaha rate decision.

Mr. O'Bryan: Will you also state for the purpose of the record what your hypothesis is about the demands for those receipts?

Mr. Miles: That is not at all material, sir.

Mr. O'Bryan: You mean to say that it is your opinion that the demand on the market does not fix the time it takes to sell a load of livestock? Is that what I understand you to mean?

Mr. Miles: The question is clear; it speaks for itself. I do not know how to clarify it. The question has been asked in every rate case, it was asked in the Omaha case, and no objection was found by the Supreme Court.

[fol. 447] Mr. O'Bryan: Well, past precedents are sometimes pernicious.

Mr. Miles: But rarely in the Supreme Court.

Mr. O'Bryan: Maybe the Supreme Court will see it in a different way.

Mr. Boyd: What is the ruling?

The Examiner: Anything further from either counsel?

Mr. Miles: I want to emphasize again to this witness that I suggested and requested that conditions be taken as

you find them. You will find a good day and a bad day on your past year, your past two or three years; you will find what we may call all sorts of conditions. I want you to consider those conditions.

Mr. O'Bryan: Let me ask the witness one question before he answers the hypothetical question. Isn't it a fact that if you had an unlimited supply, that is, all the cattle on hand that you wanted, and that you had an unlimited demand and a low price, that it would follow, as a matter of economics and a matter of course, that there would be no selling effort whatever required? In other words, if your demand was greater than your supply and you were giving away your cattle at a price which would make it profitable for the buyer to buy and slaughter those cattle, you would not have to have any selling effort, would you, you would have to shoo the buyers away?

The Witness: You would not need any salesman.

Mr. O'Bryan: No.

The Examiner: Anything further on the question pending. Objection overruled.

Mr. Miles: Do you want the question read to you, Mr. Summers?

A. No, I think I understand it.

Mr. Miles: All right.

A. I think that is rather a hard question to answer. You take and consider, especially in a butcher salesman, the [fol. 448] amount of time that it takes to sort these cattle, especially during the fall months when you are receiving a large supply of range cattle. It may take even four hours to sort up the cattle and get them ready for the buyers, and, after these cattle are sorted up, they have to be shown and priced, and, in lots of cases, especially during a Monday when you get large receipts, the cattle are held over to the next day. It would be very hard for me to determine just how many carloads of cattle I could sell over a period of a year.

Mr. Miles (continuing): Well, Mr. Summers, I would like to follow the example of the opposing counsel and testify a little myself, that I think that you are as good a salesman, have as keen an intellect and as bright as they find on other yards. You would not dispute me on that,

would you? Now, if the question has been answered on all of the yards, do you not believe that you could answer it?

Mr. Boyd: I object to that question, as to what other witnesses may have testified to on other yards. They probably testified at other times, without recognition of the fact that it was of such grave importance to the welfare of themselves and to their children; that the use that was put to the answer to that question was of such grave import, and, in answering the question, they did not expect that the answer would be used in the way it was used. I will agree with counsel that there have been answers to those questions, but I submit that this witness has given you as good an answer as you perhaps were entitled to.

Mr. Miles: I regret that Mr. Boyd, distinguished counsel as he is, should have made his objection on the ground that when other witnesses testify to what they believe the fact, that they did not know the importance of the question. I trust that counselor did not mean any reflection upon those who testified, but no other inference is possible.

Mr. Boyd: Well, in one or two instances, I think that the witness probably did not reflect the exact facts concerning what they had done, so far as,—in other words, they did not exercise any judgment in the answer to the question.

Mr. O'Bryan: Not having heard any of the other witnesses testify and having heard the question and having heard the witness' answer to the question in this case, I say that it was the only possible answer and that certainly any witness who attempted to give an answer to that question was running pretty far afield.

[fol. 449] Mr. Miles: Mr. Examiner, it seems to me that the witness is best qualified to tell as to what he can testify. Now, counsel has suggested several times that the witness cannot, even before the witness himself made such a statement, if indeed he would have made it, it may be——

Mr. Boyd: It is quite evident, Mr. Miles, in view of the answer that he has made before, has not paid any attention to my objection anyway. I objected to this question before and he answered the question. I do not think the objection could be regarded as attempting to indicate what this witness may testify to. I am sure he is going to tell the truth but I say that an answer to that question would not be of any value anyway in view of the objection I previously made to the question.

Mr. O'Bryan: I submit that Government counsel has received an answer to his question, and a very definite and very proper answer, which simply sets up conditions and states that it is impossible to give any given number, which is quite correct in my opinion.

Mr. Miles: Mr. Examiner, there are just so many answers to the objection that I would not take your time. Will the reporter read the question to the witness?

(Whereupon the question was read.)

Mr. Boyd: And, I think it fair to say to the witness that there were witnesses that could not answer it at other yards.

Mr. Miles: I would like to change the "could not" into a "would not".

Mr. Boyd: Would not or could not or did not.

The Examiner: All right, sir, that question will be amended that way. I think they have got all of it in there that at some yards they could not, would not or did not.

Mr. Miles (continuing): Mr. Summers, I will ask you this: Do you not believe that the salesmen on the Chicago Yards, taking by and large, are the equal in industry, intelligence, honesty, everything that goes to make up a salesman, if they do not rate as high on the Chicago yards as they do on the other yards with which you are familiar?

A. Yes, sir, every bit as high.

[fol. 450] Q. Mr. Summers, on other yards, the similar question has been asked, has been answered a great many times over the very similar objection by our present opposing counsel, Mr. Boyd. Do you not believe that you could answer the question under the assumptions made?

Mr. Boyd: Taking the conditions as they find them, taking all the livestock that is of the kind that this witness handles, taking all that he could sell, how many, in his judgment, could he sell in a year?

* * * * * * *

Mr. Boyd (continuing): I would like to add the objection that whether or not I have objected to the same question is not material. I am going to object as long as I have got breath to a question of that sort. I think it is not a proper question, I think it has no probative value, I think that in

order to arrive at rates to find out from this witness what he thinks he may be able to do under conditions that no man under the canopy of heaven can tell what they will be, is not asking the witness to take into consideration a proper state of circumstances, nor does it furnish information that should be set out under any rule as a basis for a hypothetical question.

* * * * * * *

The Witness: Well, I may not be able to answer you correctly. If I did answer it, it would be only guess-work.

Mr. Miles (continuing): And is that the only answer that you think you can make?

A. Well, I think there is a limit to every man's endurance.

Q. And a limit to what he can sell?

A. And a limit to what he can sell in a day, especially when he has had much sorting in butcher stuff to do before he sells these cattle.

Q. Can you tell us just where that limit is?

[fol. 451] —. If you will look back at the figures of last Monday which you asked me about some time ago, you will find I said that we had approximately 400 butcher stuff last Monday which would run to about 18 or 19 carloads. It took the two of us to sell this butcher stuff and it took us all day to sort and sell it and when I say "all day" I mean from 6:30 in the morning until 3 o'clock in the afternoon when the market is over.

Whereupon the witness was temporarily excused.

Mr. Herman W. Mack, a witness called by the Government, having previously testified, continued as follows:

Redirect examination:

The only difference between the length of time it would take to make out an account sales covering the traders transactions and one covering a country transaction was figuring the freight charge. There are a few other items that would have to be taken into consideration in making out the country account sale that would not have to be handled in the case of the traders account sales. In the

10497 account sales made out by John Clay & Co. office force, some were comparatively simple, some were complex.

[fol. 452] Recross-examination:

The scale ticket is the best means of determining the relative time devoted to the preparation of account sales, and referring to Exhibit 15-18, schedule 1, in the case of carloads, the Government exhibit shows that there were about four drafts to each carload.

In the case of Mixed No. 1 there were seven drafts per account sales; in case of Mixed No. 2 about four drafts per account sale; in the case of trucks about two drafts per account sale; and in the case of traders about two drafts for each account sale.

Redirect examination:

One scale ticket represented one weight draft of live stock.

Roy Alvin Keys, a witness called by the Government, testified as follows:

Direct examination:

I reside at 8014 South Sangamon Street, Chicago, and am a livestock broker, doing business at Chicago stockyards. I have been engaged in business at Chicago stockyards for about 18 years, as a livestock broker. If we have a speculator that puts up a margin, we finance and handle all the [fol. 453] transactions outside of purchasing of livestock; and that represents all of our activities; financing traders. We do the bookkeeping service for the traders. Furnish locker room and office space. When a trader engaging in business wants to be cleared by me all his transactions guaranteed by me,—he has to make himself known and have a reputation. After he has made arrangements to trade, or for me to clear him, his first action would be to buy livestock. I act for traders in cattle of all kinds, and for traders in hogs and in sheep. We do not act for commission men. We give a bond to guarantee the proceeds. We have an emergency case where we are connected with a commission man. In the case of the commission firm I have business

transactions with in connection with my business, the commission firm is required to have a bond by the Exchange and by the Government, but that unfortunately his money is in a bank that is closed, and until the bank question is settled he works under my bond. He handles his business as he always did other than the bonding.

When a trader buys livestock from a commission man, the commission man bills me direct for the value of the livestock. Any expense that is incurred in connection with the livestock while in the traders' hands, such as feed, is billed direct to me. At the end of a given time the trader will make a sale of his livestock, either direct or indirect through someone. The trader cannot in such cases weigh them from himself. They would be weighed in his name on our account [fol. 454] as the commission man would remit to me. I require a cash deposit to guarantee me against the traders' losses and the amount of the livestock that he handles would form the basis as to the amount. If he only handled $1,000 worth of livestock a week, he would hardly be in business. We require margin according to the amount of business done by the trader. We charge the traders fifteen cents a head for cattle, five cents a head for hogs, and $1.50 a load for hogs, and 2¢ a head for sheep. And in that charge is included all the compensation for all the services rendered by me to the trader; he has office room with me, I do his bookkeeping. There are about 50 traders that I actually do the bookkeeping for at the present time. We use one form for keeping transactions of the different traders. It is a wide sheet that has the purchases on one side and the sales on the other, and that shows the amount that is owing to me, gives the number of head, and the weight of the animal-. If livestock is carried over at the end of the week by the trader unsold, we catch weight on it or have it done by being weighed on the scales of the Stockyards Company. The Traders Exchange handles the blanket insurance, fire insurance, and I collect from the traders clearing through me and remit to the Exchange. While I do not clear commission firms, I clear order buyers, and in my classification, I call them speculators. I clear the business of three or four order buyers. I have two employees in my office, one is a bookkeeper, the other is a comptometer operator. I [fol. 455] render the same service to the order buyers as to the traders, and make the same charge.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 655

C. H. ACKER, DOING BUSINESS AS C. H. ACKER & COMPANY ET AL.,

Appellants,

vs.

UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

GEORGE I. HAIGHT,
JOHN S. BOYD,
M. K. HOBBS,
Counsel for Appellants,

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN EQUITY

No. 13,829

C. H. ACKER, DOING BUSINESS AS C. H. ACKER & COMPANY ET AL.,
Petitioners, Plaintiffs and Appellants,

vs.

UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE ET AL.,
Respondents, Defendants and Appellees.

STATEMENT OF APPELLANTS PURSUANT TO THE PROVISIONS OF RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES SHOWING THAT THAT COURT HAS JURISDICTION TO REVIEW UPON APPEAL THE FINAL JUDGMENT OR DECREE OF THE DISTRICT COURT.

I.

The suit arose to suspend and restrain the enforcement, operation and execution of Orders of the Secretary of Agriculture dated January 8, 1934 and March 12, 1934 entered

in a proceeding entitled "Secretary of Agriculture *vs.* C. H. Acker, doing business as C. H. Acker & Company *et al.*," Bureau of Animal Industry, Docket 402, instituted under Packers and Stockyards Act, 1921 (Title 7, U. S. Code, Chap. 9, Sections 181-229; Chap. 64, 42 Stat. 159 *et seq*). Section 316 of that Act (Title 7, U. S. Code, Section 217) provides:

> "217. *Proceedings for suspension of orders.* For the purposes of sections 201 to 217 inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of sections 201 to 217, inclusive of this chapter. (Aug. 15, 1921, c. 64, Sec. 316, 42 Stat. 168)."

The applicable provisions of the laws relating to the suspending or restraining the enforcement of orders of the Interstate Commerce Commission, made by the statute quoted also applicable to suspending or restraining the enforcement of Orders of the Secretary of Agriculture under Packers and Stockyards Act, 1921, are found in Title 28, U. S. Code, Section 47 (Judicial Code Section 24 g, Oct. 22, 1913 c. 32, 38 Stat. 220). This Act provides for a hearing by a three-judge court upon an application for an interlocutory injunction to sustain or restrain the enforcement of Orders of the Secretary of Agriculture under Packers and Stockyards Act, 1921; and further provides:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction * * *."

The Section further provides:

"and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission, the same requirement as to judges and the same procedure as to exception and appeal shall apply."

Section 345, Title 28 U. S. Code (Judicial Code Section 238 amended) provides that the Supreme Court has appellate jurisdiction to review the final decree of a District Court as provided in Section 47 of Title 28, referred to and quoted from above.

II.

The constitutionality of the provisions of Packers and Stockyards Act, 1921, is not involved.

III.

The date of the final decree or order sought to be reviewed is March 19, 1935; and the date upon which the application for appeal is presented is April 18, 1935.

IV.

Under the provisions of Packers and Stockyards Act, the Secretary of Agriculture has the power to determine and prescribe what shall be just and reasonable rates or charges made by market agencies, defined in the Act to be any person engaged in the business of buying or selling in commerce, live stock at a stockyard on a commission basis or furnishing stockyard services. The appellants are market agencies at the Chicago Union Stockyards. After hearing in Bureau of Animal Industries No. 402, the Secretary of Agriculture prescribed rates and charges in his Orders of January 8, 1934, and March 12, 1934. On April 19, 1934, the District Court entered an interlocutory injunction re-

straining the enforcement of said Orders. Upon final hearing the appeal was dismissed. The appellants pray for reversal on the grounds, generally, that the findings of the Secretary of Agriculture and of the District Court rest upon erroneous rules of law, were made without evidence or upon evidence which clearly does not support them, deprive the appellants and each of them of their property without due process of law under the Fifth Amendment to the Constitution of the United States, substitute the judgment of the court and of the Secretary of Agriculture for the judgment and prudent management of the appellants without any showing of inefficiency or improvidence (*West Ohio Gas Co.* v. *Public Utilities Commission of Ohio*, — Supreme Court —, 79 L. Ed. Advance Sheets 274, decided January 7, 1935), and are arbitrary, unjust and unreasonable.

V.

The cases believed to sustain the jurisdiction of the Supreme Court of the United States are *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, 74 L. Ed. 524; and *Stafford* v. *Wallace*, 258 U. S. 495, 512, 66 L. Ed. 735, 740.

Respectfully submitted,

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IN THE

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OCTOBER TERM, 1935.

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Appellants,

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Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLANTS.

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Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLANTS.

OPINIONS.

The decision of the majority of the District Court for the Northern District of Illinois, Eastern Division (Circuit Judge Alschuler, District Judge Barnes) appears in the record (Vol. II), beginning at page 1162. The separate opinion of District Judge Wilkerson appears in the same volume at page 1170.

THE STATUTES INVOLVED.

The provisions of law which authorize the Secretary of Agriculture to regulate the charges of market agencies (a person engaged in the business of buying or selling live stock on a commission basis or furnishing stockyard services) are found in Packers and Stockyards Act, 1921, Title 7, Chap. 9, U. S. Code (Sections 201-217). These sections of the statute appear as Appendix A to this brief. The analogy of the Packers and Stockyards Act to the Interstate Commerce Commission Act is such that provisions for court review of the orders of the Interstate Commerce Commission are in terms made applicable to court review of Orders of the Secretary (Title 7, Chap. 9, Sec. 217). The applicable provisions of the law relating to the suspending or restraining the enforcement of orders of the Interstate Commerce Commission made by Section 217 also applicable to suspending or restraining the enforcement of orders of the Secretary of Agriculture under Packers and Stockyards Act, 1921, are found in Title 28, U. S. Code, Section 43 to Section 47a. Section 47 is particularly applicable. These provisions relating to court review of orders both of the Interstate Commerce Commission and of the Secretary of Agriculture appear as Appendix B to this brief.

Section 345, Title 28, U. S. Code (Judicial Code, Section 238 amended) provides that the Supreme Court has appellate jurisdiction to review the final decree of a District Court as provided in Section 47 of Title 28, referred to above.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

The appellants intend to urge each of the assigned errors (R. Vol. II, pp. 1174-8). The assignments of error to comply with the particularity required are numerous but fall into groups such as those charging that the findings of the Secretary of Agriculture and of the Court are not supported by the evidence and such as those charging that the rates prescribed by the Secretary are arbitrary, unreasonable and confiscatory of the property of each of the petitioners.

The Assignments of Error are classified in the Statement of Points to Be Relied Upon (R. Vol. II, p. 1184).

STATEMENT OF THE CASE

The appellants are market agencies registered under Packers and Stockyards Act, 1921, engaged in selling or buying livestock on a commission basis at the Union Stock Yards, Chicago, a stockyard which has been ascertained by the Secretary of Agriculture to be a stockyard as defined in the Act and which has been posted as such. The action is brought against the United States of America; Henry A. Wallace, Secretary of Agriculture; Homer S. Cummings, Attorney General; and Michael Igoe, United States District Attorney for the Northern District of Illinois.*

The action was brought pursuant to the provisions of Packers and Stockyards Act, 1921, and Sections 43 to 47a of U. S. Code, Title 28. And its purpose was to restrain the execution and enforcement of Orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934.

Jurisdiction and venue of the District Court, which was admitted by answer (R. Vol. I, p. 198), arose from the statutes identified; and also because the action was a suit of a civil nature wherein the matter in controversy exceeds the sum of Three Thousand Dollars ($3,000) exclusive of interest and costs and arises under the Constitution or laws of the United States, the correct decision depending, in whole or in part, upon the construction and application of the Constitution of the United States, particularly the Fifth Amendment thereof.**

The Secretary of Agriculture on September 23, 1932, issued an order of inquiry and notice of hearing directing

* By order dated July 13, 1935, Michael Igoe was substituted as a party defendant in lieu of Dwight H. Green, his predecessor as District Attorney (R. Vol. II, p. 1178).

** The petition and complaint of the appellants was filed April 18, 1934. It is erroneously stated in the record that it was filed Jan. 31, 1935. The complaint begins at p. 1 of Vol. I of the record.

that an inquiry be made for the purpose of determining the lawfulness of the rates and charges of the appellants (R. Vol. I, p. 67). The rates challenged had been in effect since 1923. After the enactment of the Packers and Stockyards Act, 1921, instead of resorting to the formal procedure provided for in that Act, a stipulation was entered into between the Chicago Live Stock Exchange (a voluntary association of which most of the appellants are members), and the Secretary of Agriculture, providing that Howard M. Gore, in charge of the trade practice division of the Packers and Stockyards Administration, and G. N. Dagger, in charge of the division of rates and charges of the Packers and Stockyards Administration, should act as arbitrators in the settlement of rates to be charged (R. Vol. I, p. 29). Subsequently the arbitrators lodged their award with the Secretary of Agriculture on July 31, 1923 (R. Vol. I, p. 33), which award was approved by the then Secretary of Agriculture (R. Vol. I, p. 57).

The rates made and recommended by the arbitrators (R. Vol. I, pp. 44-47) with immaterial changes, continued to be the rates charged at the Chicago yards and were in effect at the time of the Secretary's order of inquiry and notice of hearing. The schedule of such rates is shown as Exhibit B-1 to the Petition and Complaint (R. Vol. I, p. 57 *et seq.*).

As a result of the Secretary's order of inquiry of September 23, 1932, hearings were had in Chicago and in Washington. Most of the leading salesmen of cattle, hogs and sheep, of the Chicago market, who were both owners and employees, were called and testified either on behalf of the appellants or the Government. Order buyers, yard and office employees of the appellants likewise testified. Accountants were called by the Government and introduced into evidence audits and statistical data covering the business

transacted by the appellants during 1931 and 1932. A Government accountant also introduced a cost study prepared by him covering the actual experience of each of the appellants as to income, expenses and volume of sales. An accountant of the appellants also introduced into evidence data showing the costs and experience of each of the appellants and the performance of each firms' salesmen.

On January 8, 1934, the Secretary issued his findings of fact, conclusion and order (Exhibit C to Petition, R. Vol. I, p. 62, *et seq.*). Upon the basis of the findings made by the Secretary, he prescribed a schedule of rates and charges (R. Vol. I, pp. 185-189). On February 7, 1934, the appellants filed with the Secretary of Agriculture a petition for rehearing alleging in substance that the schedule of rates and charges prescribed in the Secretary's order would cause reductions in revenue which would make it impossible for the appellants to pay necessary operating expenses, thereby curtailing the efficiency of the service rendered; that there had been increases in expenses resulting from the operation of the National Recovery Act and Agricultural Adjustment Act; that the schedule of rates and charges prescribed by the Secretary was inequitable in that the rates prescribed were not related to the cost of rendering service; that the appellants desired to show that a draft is a more equitable basis than a consignment for the assessment of rates and charges; that during 1933 substantially all of the appellants operated at a loss; that direct sales of live stock to packers were increasing; that the rates prescribed by the Secretary would necessitate throwing out of employment a large number of people; and that the conditions which prevailed during 1933 constituted a greater change than has occurred during any twelve months period prior thereto. (R. Vol. I, p. 190).*

* The petition for rehearing filed February 7, 1934, is filed in this Court as a physical exhibit.

The foregoing petition for rehearing was denied by the Secretary of Agriculture on March 12, 1934, in his Supplemental Order (R. Vol. I, pp. 189-191). By the same Order, the Secretary made some modification of the rates prescribed by his Order of January 8, 1934, the modified schedule being shown in Volume I of the Record, pp. 191-195.

Before the effective date of the Order of March 12, 1934, and on April 9, 1934, the appellants filed a second or amended petition for rehearing (R. Vol. I, p. 10). In this petition for rehearing it was alleged that the rates and charges prescribed by the Order and Supplemental Order of the Secretary would create a net reduction of 25 per cent of gross income as compared with the income derived from the rates of 1923; that such reduction in income would be confiscatory because the income to be produced by the schedules of the Order and the Supplemental Order would not produce gross income sufficient to pay the necessary and usual costs of doing business; that the Order and Supplemental Order and the schedules thereof were based on findings for the years 1931 and 1932, while during the years 1933 and 1934, decided and profound economic changes had occurred adversely affecting the market agencies at Chicago; that legislation of Congress and the rulings and activities of administrative agencies of the Government, particularly the Agricultural Adjustment Administration, had brought about drastic reduction in the production and marketing of livestock, particularly hogs.*

The petition for rehearing filed April 9, 1934, was denied by the Secretary of Agriculture within three days and the Order of January 8, 1934, and the Supplemental Order of March 12, 1934, were ordered into effect on April 20, 1934 (R. Vol. I, p. 10).

Before the effective date of the rates prescribed, the

*The amended petition for rehearing filed April 9, 1934, is filed in this Court as a physical exhibit.

appellants, on April 19, 1934, secured from the District Court, three Judges sitting as a Statutory Court, an interlocutory injunction (R. Vol. I, pp. 195-7). By the terms of the injunctional order, the appellees were restrained from interfering with the collection of the rates then and since 1923, in force. It was also provided in the Order (R. Vol. I, p. 197) that the appellants impound with the Clerk of the Court the amount by which the charges collected under the schedule of rates in effect exceeded the amount which would have been collected for the same period under the rates prescribed by the Secretary of Agriculture, together with a verified statement of the names and addresses of all persons upon whose behalf such amounts were collected.

Upon final hearing, the Bill of Complaint was dismissed by decree dated March 19, 1935 (R. Vol. II, pp. 1171-2). The decree provided that if an appeal should be taken within thirty days (which was done), the interlocutory injunction should continue in effect pending the appeal, appellants in the meantime to impound with the Clerk of the Court, amounts by which the rates and charges collected, exceeded the rates and charges prescribed in the Orders of the Secretary of Agriculture.

THE RECORD

The record in this case comprises, among other things, the bill (R. Vol. I, p. 1) and answer (R. Vol. I, p. 197); a narrative statement of the evidence before the Secretary of Agriculture (R. Vol. I, p. 297); the narrative statement of evidence before the Statutory Court (R. Vol. I, p. 211); the Findings, Conclusions and Orders of the Secretary of Agriculture (R. Vol. I, pp. 62-195).

ANALYSIS OF THE PLEADINGS

The issues in the case, we believe, can be shown clearly by an analysis of the petition and complaint, and the answer. The petition is divided into six sections which are here abstracted briefly and severally with the admission or denial of the answer indicated.

Section I.

This section identifies the parties and sets up the jurisdiction and venue of the court (admitted). The general charges made are that the Order and Supplemental Order of the Secretary of Agriculture are arbitrary, capricious and unreasonable and without, and contrary to, evidence adduced before the Secretary; and that said Orders are confiscatory of the property and business of the petitioners and if put into effect will deprive the petitioners of their property without due process of law in violation of the Fifth Amendment (denied).

The history of the Chicago Union Stock Yards is set up. Also that Chicago yards furnish the basic market for livestock in the United States and even throughout the world (admitted); that the prices prevailing at the Chicago market establish and govern world prices (admitted); and that live stock is received from 45 states of the Union (admitted).

It is alleged that after the enactment of the Packers and Stockyards Act in 1921, a schedule of rates and charges was established in 1923 by arbitration. The rates then adopted as a result of the arbitration have been in effect without substantial change ever since 1923 (all admitted). Substantially all of the appellants operated at a loss in 1933 under the 1923 rates, despite salary reductions and other economies (denied).

The proceedings before the Secretary under his order of inquiry, his Findings, Conclusions and Order containing the proposed new rates, the two petitions for rehearing and the denials thereof, the issuance of the Supplemental Order of March 12, 1934, containing a slightly modified schedule, and the determination of the Secretary to enforce his orders unless restraints are set up and described (all admitted).

Section II.

This section describes the business of the appellants. The service is buying and selling livestock for producers and shippers thereof. That service is invaluable to the agricultural industry. Roughly one-half of the hogs and one-third of the cattle and sheep marketed in central markets pass through the Chicago Union Stock Yards and are sold by the appellants and others similarly situated. Upon the arrival of livestock at the Stock Yards, the company operating the yards unloads the cars or trucks, furnishes the necessary feed, and except in the case of sheep the appellants make their own delivery to pens assigned to them by the Stock Yards company. The stock is then sold by the appellants, who are commission merchants or agents.

To conduct the business of the appellants, skilled and experienced salesmen are required to grade the livestock, to furnish to customers advices as to prices and in the matter of purchasing and feeding and time of marketing. The appellants, whether individuals, partnerships or corporations, conduct a personal service business. In the case of corporations the owners usually are the directing heads and themselves render the services of selling and buying on order. The selling of livestock on a commission basis requires skill and judgment in the evaluation of price factors and in the grading and classification of livestock. Knowledge of market conditions, of supply and demand, and the ability to

exercise a judgment as to trends and future conditions are essential. The salesmen of the appellants and the appellants themselves as entrepreneurs render services which are essentially personal and professional. The business of the appellants is essentially a cash one and capital investment is small. The principal item of cost is that of salesmen's salary. Salesmen, because of the personal and professional character of their services, because of the skill and judgment required of them, and because of the clientele following which they possess, demand and are entitled to compensation commensurate with the nature of their skill, judgment, responsibilities and services.

The Chicago Live Stock Exchange is a trade association maintained by the appellants and other market agencies.

The service and business of the market agencies is a highly competitive one. Any shipper may avail himself, either of the services of one of the appellants; or co-operative commission agencies; or he may, if he desires, offer his live stock for sale in person.

The volume of sales of livestock made directly to meat packers is increasing. There are at least six other stockyards in the central market area, besides numerous packer concentration stations. The shipper is thus offered a choice of methods of selling his livestock and of the compensation that he shall pay therefor. The appellants must at all times and during any market day of the year be ready to convert arriving live stock into cash, and on the same or on the following day pay the producer or shipper for his consignment. It is necessary that the appellants acting as salesmen or managers or their employed salesmen, their yard men and office staff be on duty continuously regardless of season or regardless of volume of business. Salesmen particularly must be employed by the year. The business of the appellants cannot be conducted on a piecework basis.

All of the allegations of Section II of the Bill are admitted except that it is denied that the services of all the appellants are necessary; except that it is denied that appellants do not enjoy a monopoly; and except for the denial that salesmen must be employed by the year.

Section III.

This section of the bill charges generally that the rates prescribed by the Secretary of Agriculture in his Order of January 8, 1934, and in his Supplemental Order of March 12, 1934, are unreasonable and arbitrary and are contrary to the evidence and without evidence upon which they are purported to be based; and that they are unreasonably and arbitrarily arrived at by guess and supposition rather than by any well-known and well-recognized statistical methods such as modal method, the bulk-line method, the weighted average method, or percentage deviations therefrom. The particulars in support of these charges are then set forth specifically in the bill. They are, of course, denied by the answer. One of the most important particulars is that the costs found to be reasonable by the Secretary are below actual costs. The principal element of costs is the salary paid to salesmen; and one of the primary issues in this case is whether the Secretary of Agriculture has power to determine the amount of salary which a market agency cannot exceed in compensating its salesmen. There is no question of fraud or bad faith involved; the sole question is whether the Secretary can constitute himself the manager or board of directors of a market agency and by administrative fiat determine the maximum salaries of employees, particularly salesmen. It is not deemed necessary to recite here the particulars upon which the charges of unreasonableness and lack of factual foundation are made. Of necessity they must be discussed in the argumentative portion of this brief.

Section IV.

This section of the bill is devoted to the charges of confiscation of property and the deprivation of business and property without due process of law. The experiences of the market based upon aggregate figures for all of the appellants are given with particularity. It is charged that even under the present rates the appellants lost approximately $300,000 in 1932; and that if the rates prescribed by the Secretary had been in effect during the year 1932 the loss to the appellants would have been increased to over $1,000,000. It is charged that the rates prescribed would have caused a reduction of 25.47% in gross actual selling commissions in 1932 and would have caused a loss of 32.59% compared with the loss of 9.56% actually suffered under the rates now and in 1932 in force. It is further charged that the cost found to be reasonable by the Secretary would have been $1,461,394 less in 1932 than the actual and aggregate costs for 1932 of $3,122,908 as calculated by the appellants.

The figures set forth in this section of the bill are in the main admitted in the answer for what they show, but their relevancy is denied.

It is further charged that as to each species of livestock each appellant will not, under the rates prescribed, reimburse to him or it actual operating expenses, or expenses held to be reasonable by the Secretary. The answer admits that some of the appellants will not make their costs but denies that the appellants will not make costs found to be reasonable by the Secretary. Again we meet the issue of the managerial power and capacity of the Secretary of Agriculture.

It is further charged that the confiscatory effect of the rates prescribed will be enhanced by reason of the accelerat-

ing diminution in volume of business handled by the Chicago market agencies. The diminution is admitted but the effect denied. Increasing truck deliveries, it is charged, will enhance the confiscatory effect of the prescribed rates. Again, increasing truck-ins are admitted but the effect denied.

It is charged that the commissions under the prescribed rates for selling calves are largely below the reasonable cost as found by the Secretary for selling calves; and that there is no evidence to show that the appellants will do enough business in the bracket wherein the commissions are greater than the costs, as found by the Secretary, to make up the less-than-cost rate for the larger package brackets. This is denied.

Specifically it is alleged that the Secretary found the reasonable cost for the sale per head of cattle and calves was 42.97c, whereas the appellant whose business was conducted more economically than any of the other petitioning firms entailed an actual cost of over 57c per head in the sale of cattle and calves; and that the average of all the petitioners is a total actual cost of over 83c per head. Similar specific figures are given for the other species of livestock. The cost figures as found by the Secretary are admitted but the cost figures as found by the appellants are denied upon the theory that the appellants' costs are unreasonable because salesmen are paid salaries that are too high. Again the Secretary is imposing his judgment for that of the management of the businesses as to what compensation it is necessary to pay salesmen in order that they may render the best of service to the producers and shippers of livestock, and secure for such customers the top market prices.

Section 28a of the Bill is a charge by each appellant on his or its own behalf that the facts alleged in the preceding paragraphs of the Bill as to market experiences apply to

his or its own business without substantial variation; that his or its own business is conducted economically, efficiently and at reasonable costs and with the exercise of sound business judgment; that the rates, charges, and practices prescribed by the Orders of the Secretary, if permitted to become effective and if enforced, will deprive him or it of property and business without due process of law and will deny the equal protection of the law.

Section V.

It is here alleged that after the publication of the Order of January 8, 1934, the appellants filed a petition for rehearing wherein they sought to show among other things that the rates prescribed would make it impossible for them to pay operating expenses, and that substantially all of them under the rates in effect in 1933 had operated at a loss, which loss would be increased had the prescribed rates then been in effect. The filing and denial of the petition is admitted. An amended petition for rehearing was filed April 9th, 1934, wherein it is alleged, among other things, that the rates prescribed would create a net reduction of 25% in gross income, as compared with income from rates then and now in force. And that such reduction in income would be confiscatory because the prescribed rates would not produce income sufficient to pay the usual and necessary costs of doing business. The filing and denial of the amended petition containing the alleged allegations is admitted.

Section VI.

This section charges that failure on the part of appellants to comply with the order and supplemental order of the Secretary will render them subject to prosecution and to liability for heavy penalties and forfeitures as against

which liabilities there is no adequate protection at law; that they may be subjected to multifarious and vexatious suits for reparations on the part of various shippers of livestock.

It is further charged that if the prescribed rates go into effect losses will be incurred; and that if later it should be determined that the Orders are null and void the appellants will be without means of collecting the difference between the prescribed rates and the present rates without multifarious suits and actions at law, impractical in character and extending to most of the States of the Union.

It is admitted that the defendants will enforce the prescribed rates unless restrained.

The prayer of the Bill is for an interlocutory injunction and for a permanent injunction and order suspending and annulling the purported order and supplemental order of the Secretary.

SUMMARY OF ARGUMENT.

I.

THE RATES AND CHARGES SPECIFIED IN THE ORDERS OF THE SECRETARY OF AGRICULTURE ARE UNJUST AND UNREASONABLE, ARE BASED UPON FINDINGS MADE WITHOUT EVIDENCE OR UPON EVIDENCE INSUFFICIENT TO SUPPORT THE FINDINGS.

A. The performance required of salesmen by the Secretary has no relationship to actual experience; and consequently the costs allowed by the Secretary for salesmen's salaries are inadequate and unreasonable.

1. Cattle salesmen.
2. Hog salesmen.
3. Sheep salesmen.

B. The allowance for costs of business getting and maintenance is the substitution of the Secretary's judgment for that of the prudent management of the owners. There is no evidence in the record of waste or extravagance.

1. The function of business getting and maintenance is not only to secure and retain business but to serve the shipper of livestock.

2. The Secretary did not consider competition with other markets nor direct selling to packers.

3. The amount allowed by the Secretary for business getting and maintenance has no relationship to actual costs.

C. The Secretary's method for determining the proper allowance for owners' salaries was unreasonable, was based upon an erroneous rule, and is without foundation in the record.

1. The Secretary unreasonably considered reim-

bursement to cover management and to cover uninsurable risks to be profit.

II.

THE SECRETARY IN PRESCRIBING REASONABLE COSTS FOLLOWED NO WELL KNOWN OR WELL RECOGNIZED EXPERIENCE METHOD, PARTICULARLY IN RELATION TO THE PERFORMANCE AND SALARIES OF SALESMEN.

A. Yarding and office expense allowed by the Secretary, while below costs actually incurred, bear a relationship to actual cost. The departure from experience and evidence by the Secretary in respect to salesmen was arbitrary and unreasonable.

B. The method by which the Secretary found reasonable costs is not disclosed in his findings or orders.

C. The theories of the Secretary as to performance of salesmen cannot meet the test of economists of measurement by actualities.

III.

THE DENIALS OF THE PETITION FOR REHEARING WERE ARBITRARY.

A. One is not compelled to come to court on the issue of confiscation with the facts already found against him.

IV.

THE SECRETARY USED A SINGLE YEAR, 1932, AS A TEST PERIOD. THIS WAS INADEQUATE WHETHER HIS FINDINGS AS TO THAT YEAR WERE RIGHT OR WRONG.

A. Changed economic conditions and decrease of volume of livestock handled emphasize the necessity of an adequate test period.

V.

THE RATES PRESCRIBED BY THE SECRETARY ARE CONFISCATORY OF THE BUSINESS, PROPERTY AND SERVICES OF EACH APPELLANT AND VIOLATIVE OF THE FIFTH AMENDMENT OF THE CONSTITUTION.

A. The appellants have fulfilled every requirement to show that the rates prescribed by the Secretary do not return actual and necessary costs and are, therefore, confiscatory as to each appellant considered individually.

VI.

THE APPELLANTS WERE ENTITLED TO A TRIAL DE NOVO IN THE DISTRICT COURT BOTH ON THE ISSUE OF CONFISCATION AND ON THE ISSUE OF THE DENIAL OF PETITIONS FOR REHEARING.

PROPOSITIONS OF LAW.

The legal principles involved in this litigation are set forth in the following propositions of law, with citation of authority. These propositions of law support the argument summarized in the foregoing section of this brief. Many of the propositions it will be unnecessary to argue. On disputed questions of law, appropriate argument will be made in the body of the brief.

1. Courts will declare void an order of a rate-making body based on findings made without evidence, or contrary to the evidence, or upon findings made that are not clearly supported by the evidence.

Tagg Bros. and Moorhead v. *United States*, 280 U. S. 420, 443.

West Ohio Gas Co. v. *Public Utilities Comm.*, 294 U. S. 79, 82.

Denver Union Stock Yard Co. v. *United States*, 57 F. (2) 735, 738; D. C. Col.

Chicago Junction Case, 264 U. S. 258, 263.

Northern Pacific Ry. Co. v. *Department of Public Works*, 268 U. S. 39, 44.

Interstate Commerce Commission v. *Union Pacific R. Co.*, 222 U. S. 541, 547.

Akron C. & Y. R. R. Co. v. *United States*, 261 U. S. 184, 203.

Colorado v. *United States*, 271 U. S. 153, 166.

L. & N. R. R. v. *Finn*, 235 U. S. 601, 606.

2. Courts will declare void such an order if it rests upon erroneous rules of law.

Tagg Bros. and Moorhead v. *United States*, 280 U. S. 420, 443.

Denver Union Stock Yard Co. v. *United States*, 57 Fed. (2) 735, 738, D. C. Col.

Interstate Commerce Commission v. *Diffenbaugh*, 222 U. S. 42, 46.

Northern Pacific Ry. Co. v. *Department of Public Works*, 268 U. S. 39, 43.

Miss. R. R. Co. v. *M. & O. R. R.*, 244 U. S. 388, 395.

3. The application to enforce or to restrain the execution of a lawful order of a rate-making body is a suit in equity to be heard upon *all* the evidence bearing upon the matters in controversy.

Interstate Commerce Commission v. *Alabama Midland R. Co.*, 168 U. S. 144, 174, 175.

Cincinnati N. O. and Texas Pac. Ry. v. *Interstate Commerce Comm.*, 162 U. S. 184, 196.

Texas and Pac. Ry. v. *Interstate Commerce Comm.*, 162 U. S. 197, 239.

Kentucky & Indiana Bridge Co. v. *L. & N. Railroad Co.*, 37 F. 567, 614, C. C. Kentucky.

Interstate Commerce Comm. v. *C. B. & Q. R. Co.*, 94 F. 272, 274, C. C. Ill.

United States v. *Missouri Pacific Ry. Co.*, 65 F. 903, 907, C. C. Kansas.

Interstate Commerce Comm. v. *Santa Fe R. Co.*, 50 F. 295, 304 C. C. Cal.

Interstate Commerce Comm. v. *Lehigh Valley R. Co.*, 49 F. 177, 180, C. C. Pa.

Interstate Commerce Comm. v. *L. & N. R. Co.*, 73 F. 409, 414, C. C. Tenn.

Missouri K. & T. R. Co. v. *Interstate Commerce Comm.*, 164 F. 645, 649, C. C. Mo.

Interstate Commerce Comm. v. *Union Pacific R. Co.*, 222 U. S. 541.

Manufacturers' Ry. Co. v. *Interstate Commerce Comm.*, 246 U. S. 457.

Crowell v. *Benson*, 285 U. S. 22, 60, 61, 64, 65.

4. When the owner of a property or business challenges an order of an administrative body as being confiscatory or otherwise an invasion of constitutional rights, such owner is entitled on that question to the independent judgment of the court both as to the law and as to the facts.

Crowell v. *Benson*, 285 U. S. 22, 60, 61, 64, 65.

Denver Union Stock Yard Co. v. *United States*, 57 Fed. (2) 735, 738, D. C. Col.

Ohio Valley Water Co. v. *Ben Avon Borough*, 253 U. S. 287, 289.

Blue Field Water Works and Improvement Co. v. *Commission*, 262 U. S. 679, 689.

Lehigh Valley R. R. v. *Commission*, 278 U. S. 24, 36.

United Ry. & Elec. Co. v. *West*, 280 U. S. 234, 251.

5. No rate-making body is clothed with the general power of management incident to ownership; and hence no rate-making body has a right, in fixing reasonable rates, to ignore, exclude, or reduce items of operating expenses actually incurred and thus to invade the right of an owner to manage his property or his business. The Secretary of Agriculture has no power to substitute his judgment for that of the managers of market agencies in respect to salaries of salesmen or other operating expenses.

West Ohio Gas Co. v. *Public Utilities Comm.*, 294 U. S. 63, 72.

Utilities Commission v. *Springfield Gas Co.*, 291 Ill. 209, 234; 125 N. E. 891.

Citizens Gas Co. v. *Commission*, 8 F. (2) 632, 634 (D. C. Missouri).

New York and Richmond Gas Co. v. *Prendergast*, 10 F. (2) 167, 208, 209 (D. C. N. Y.).

Banton v. *Belt Line Rwy. Corp.*, 268 U. S. 413, 421.

Havre de Grace Bridge Co. v. *Towers*, 103 Atl. 319 (P. U. R. 1918-D, 484, 490, Md.).

Sparta v. *Monroe County Telephone Co.*, P. U. R. 1917-C, 507, 514, Wisconsin.

Brooklyn Borough Gas Co. v. *Prendergast,* 16 F. (2) 615, 623 (D. C. New York).

Aetna Insurance Co. v. *Hyde,* 34 F. (2) 185, 196 (D. C. Missouri).

Idaho Power Co. v. *Thompson,* 19 F. (2) 547, 575 (D. C. Idaho).

Denver Union Stock Yard Co. v. *United States,* 57 F. (2) 735, 747 (D. C. Col.).

Monroe Gaslight & Fuel Co. v. *Commission,* 11 F. (2) 319, 325 (D. C. Michigan).

Pacific Telephone & Telegraph Co. v. *Whitcomb,* 12 F. (2d) 279, 288 (D. C. Washington).

Interstate Commerce Commission v. *Chicago G. W. R. Co.,* 209 U. S. 108, 118.

Chicago Milwaukee & St. Paul R. Co. v. *Wisconsin,* 238 U. S. 491, 501.

Coplay Cement Mfg. Co. v. *Commission,* 271 Pa. 58, 114 Atl. 649.

6. Rates fixed by a rate-making body which are not sufficient to provide a reasonable return on the value of the property used at the time that it is being used for the public service are confiscatory.

Board of Public Utility Commissioners v. *New York Telephone Co.,* 271 U. S. 23, 31.

Blue Field Water & Improvement Co. v. *Commission,* 262 U. S. 679, 690.

Los Angeles Gas & Elec. Corporation v. *Commission,* 289 U. S. 287, 305.

Smythe v. *Ames,* 169 U. S. 466, 547.

McCardle v. *Indianapolis Water Co.,* 272 U. S. 400, 408, 409.

Ga. Ry. & Power Co. v. *Commission,* 262 U. S. 625.

Pacific Gas & Elec. Co. v. *San Francisco,* 265 U. S. 403, 415.

Denver Union Stock Yard Co. v. *U. S.,* 57 F. (2) 735, 740.

7. The value of the service to the user thereof is to be considered by the rate-making body in prescribing reasonable rates.

Smythe v. *Ames*, 169 U. S. 466, 547.
San Diego Land & Town Co. v. *City of National City*, 174 U. S. 739, 757.
Cotting v. *Goddard*, 183 U. S. 79, 91, 95.
Darnell v. *Edwards*, 244 U. S. 564, 570.
Vandalia R. R. Co. v. *Schnull*, 255 U. S. 113, 119.

8. A rate-making body cannot require the owner of a public utility to render service for less than the cost thereof or without substantial reward.

Northern Pac. R. R. Co. v. *North Dakota, ex rel. McCue*, 236 U. S. 585, 595.
Norfolk & Western Ry. Co. v. *Conley*, 236 U. S. 605, 608, 609.

9. The right to engage in an occupation or business is subject to protection under the Constitution of the United States just as well as is the right to own and enjoy property and the use thereof.

New State Ice Co. v. *Liebmann*, 285 U. S. 262, 279.
Lawrence v. *Briery*, 239 Mass. 424, 132 N. E. 174.
Smith v. *Texas*, 233 U. S. 630, 636.
Truax v. *Raich*, 239 U. S. 33, 41.
Coppage v. *Kansas*, 236 U. S. 1, 14.

10. The adoption of a single year as a test or standard is arbitrary and inadequate.

West Ohio Gas Co. v. *Public Utilities Commission*, 294 U. S. 79.
Denver Union Stock Yard Co. v. *United States*, 57 F. (2) 735.
Knoxville Water case, 212 U. S. 1.

ARGUMENT.

I.

THE RATES AND CHARGES SPECIFIED IN THE ORDERS OF THE SECRETARY OF AGRICULTURE ARE UNJUST AND UNREASONABLE, ARE BASED UPON FINDINGS MADE WITHOUT EVIDENCE OR UPON EVIDENCE INSUFFICIENT TO SUPPORT THE FINDINGS.

The Secretary made findings in respect to "potential performance" of salesmen for each species of livestock. The market average for cattle in 1932, the year under investigation, was 392 carloads per salesman; the Secretary says that 1,000 cars is reasonable; only two firms reached that average. Of a hog salesman the Secretary requires a performance of 1,060 carloads per year; the market average was 385 carloads in 1932; no single appellant reached that prophetic achievement. For sheep salesmen the Secretary would demand a performance of the sale of 1,035 carloads per year. Actual performance averaged 465 cars in 1932. Two appellants reached the Secretary's goal in 1932. (References, Secretary's findings; Respondents' Exhibit 12, Schedules 24.)*

The Secretary made findings as to reasonable costs, to be discussed later. Since costs alleged to be reasonable are based by the Secretary upon a hypothetical performance, it is necessary to discuss at length the evidence upon which the Secretary based his "potential performance". The

*The Secretary quotes instances of higher performance of salesmen than some of the figures shown by Respondent's Exhibit 12 and used herein. This difference is accounted for thus: If a salesman who spent full time selling during market hours, solicited in the country over weekends, or wrote letters or made out account sales at night, the time thus spent was subtracted from his function as a salesman, and he was credited with being only a fractional salesman. Thus dividing the carlots sold by a firm by fractional rather than by whole salesmen, the Secretary boosts the average performance per salesman.

findings are not based upon what is done, as we later show in more detail, but upon opinion evidence of what might be done.

In paragraph 125 of his Findings (R. Vol. I, pp. 143-144), the Secretary refers to the testimony of witnesses to justify his findings in respect to the performance of salesmen. A reference to the testimony itself shows an inaccurate paraphrasing in the Secretary's findings.

Harold Summers, the first witness referred to in that section, did not state that he could handle the amount of cattle that came to his firm. He said (R. Vol. I, pp. 359-364) what a salesman could do under any and all conditions was guesswork; that sometimes cattle sold themselves, and sometimes it took a salesman four hours just to sort them.

The next statement in paragraph 125 reads:

> "Another witness stated that he had sold four carloads of cattle in one day and had sold out by noontime, and if he had had two more loads that day he could have sold them. It was his well formed opinion that he could sell six loads of cattle in a day. He stated that if he should get ten loads of cattle, he would go out and sell them and would not hire any extra help in selling them but that he might require some extra help in yarding. This estimate applied to all kinds of cattle."

The witness in question was W. C. Patterson, called by the Government. His testimony as shown in R. Vol. II, p. 375 is:

> "The four carloads of cattle which I sold about in February I believe went over the scales about 12:00 o'clock. If I had eight loads of the same kind and quality to sell I could not say whether or not I could sell them because ofttimes you can sell four loads and have an additional four loads of the same kind, and you might not get them sold the same day because one buyer had suited his order and the other fellows would not bid you on the other four for as much as you got for the ones you considered the same cattle, but that is the way the market runs. There is a market for

everything that comes to the Chicago yards for some kind of a price during the day. If I had eight loads I could have gotten some price for them if I had been willing to take it maybe."

With reference to the ten cars, the witness testified (R. Vol. II, p. 382):

"Q. *If there were half the commission firms here, you believe you could sell ten a day, don't you?* (Italics supplied.)*

A. Yes, I might not be able to sell ten if the market condition was, it would be owing to market conditions whether you could or could not, day in and day out, there might be days you could do it easily. *I could sell ten a day on some days and on other days you could not.*"

He stated at R. Vol. II, p. 380 that one man could not sell ten cars of cattle of mixed stuff in one day.

We have searched the record for the statements of the next witness that is said to have given his opinion that a good salesman should be able to sell 25 loads of steers in a day, but cannot locate it.

The next statement in paragraph 125 reads:

"A witness who is a representative of a live stock producers organization testified that in his opinion a cattle salesman should handle 2,000 cars of cattle in a year and a hog salesman should handle an equal number of hogs in a year. This witness has had experience in shipping a great many cattle and hogs to the markets at Omaha and Chicago and has spent considerable time on the markets observing the sale of livestock." (R. Vol. I, p. 144.)

The witness actually stated (R. Vol. I, p. 313):

"I have spent a great deal of time at various live stock markets, and have been on the Chicago market and seen sales made *occasionally.*

"Mr. Miles: I will ask you this: In your opinion, how many carloads of cattle should a salesman of ordinary efficiency sell in the course of a year? I want

* Unless otherwise indicated emphasis is supplied throughout this brief.

you to consider that there are good days and bad days, rainy days, sunshiny days, take it throughout the year. Just how many carloads of cattle do you think a salesman should sell or could sell if he had all that he could do?

"Mr. Boyd: I object to the question. The witness has not shown that he has ever sold any cattle on the Chicago market at any time, as a salesman, and that it would be a mere opinion and have no binding effect upon these respondents.

* * * * *

"Mr. Miles: Mr. Examiner, I think that if counsel will read the Omaha case again he will see that the criterion is not what a man does do, but what he could do. I think the question is perfectly proper. The witness has testified that he has observed salesmen.

"The Examiner: Objection overruled.

"The Witness (Continuing): Well, I never yet saw a cattle salesman that placed any particular limit on the number of cars that he could sell if he had them to sell. I would, in answering that question, base my answer on a 200 selling day year, which would be practically four days a week, and I think that any salesman would say that he could sell at least ten cars of cattle on any day, if he could get them to sell, and that would be a minimum of 2,000 cars a year applying to cattle.

* * * * *

"Mr. Miles (Continuing): I will ask you, Mr. Mollin, if that is your opinion, that a man could, under the circumstances named, sell 2,000 carloads a year.

A. Absolutely" (R. Vol. I, pp. 313-314).

The witness was testifying in the month of May. He said that the last time he had been at the Chicago Stock Yards, the last time he had been in cattle pens at the Chicago Stock Yards was the previous December, he guessed; that he did not observe livestock being sold by a salesman at that time. When asked the last time he had observed a salesman in the cattle alley on the Chicago market, he said that he had not been active in the live stock business since 1928, that he had been in the stockyards since 1928 several times, but had not learned anything that he did not previously know about

it; that he did not follow his salesman around and observe his work; that he had been in the pens and seen him, seen some actual selling. He said he was in numerous pens that he could not tell exactly what salesmen he had observed. When asked if he could recall any particular salesman at that time he stated that it had been his practice when he came to Chicago to look up his old friends that he used to ship cattle largely to—Rosenbaum Brothers, Luther Conover of the National (Luther Conover has never been connected with the National), that he had dropped into their pens two or three times since he had been with the National Live Stock Association.

When asked upon what he based his opinion that a live stock salesman could sell at the present time on the market ten loads of cattle a day just what factors he took into consideration, he stated that he had never seen a live stock salesmen that could not sell ten cars of cattle in a day if he had them to sell; that he had seen them sell so many more than that number of animals on occasions without apparently straining their ability, that he thought he had been reasonable in setting it at ten cars a day. As to what salesman he had in mind as selling ten cars a day currently, he stated that he was testifying from his experience as to what he thought they could do, that he thought any of them could sell ten cars a day if they could get them.

In answer to the question as to his familiarity with the marketing situation at Chicago at the present time and the manner in which the live stock is received, he stated that he was familiar with the situation the way it was when he was shipping cattle to Chicago and that he did not assume that it was much different than it was then, but his testimony was based on his own experience and not on conditions to-day, but that if it could be shown that conditions are vastly different that would be in the record (R. Vol. I, pp. 316-317).

The next witness discussed by the Secretary (R. Vol. I, p. 144) is said to have testified that:

> "A cattle salesman testified that over the course of a year a salesman could sell five carloads of steers per day if the market is right. He stated that during the present summer he had seen salesmen sell as many as ten carloads in a day."

E. A. Brotzman is the witness referred to (R. Vol. II, p. 849). The witness testified as follows (R. Vol. II, p. 857):

> "Q. In your opinion, what may a cattle salesman be reasonably expected to sell, based on per day, or on the month, assuming now that he had all that he could handle?
>
> The Witness: It is pretty hard to form an opinion, Mr. Examiner. Market conditions some days, one could sell cattle much faster and easier than he could sell on others. I would not want to say how many cattle a man could sell in a day because so many things enter into the trading. Our firm sells all the live stock that comes to us from day to day over the course of a year. We aim to sell all we can, sometimes we have to hold some over.
>
> Q. Assume a steer salesman had five straight carloads of steers, each and every market day throughout the year, in your judgment could he sell that number without any other salesman assisting him?
>
> A. Five carloads?
>
> Q. Yes, sir.
>
> A. On a good market he could sell five loads, on a bad market, I have seen times when a man did not get any sold.
>
> Mr. Miles (Continuing): But at the end of the year, do you believe that he could have sold an average of five carloads per day each and every market day, recognizing that some days you have a fast market and some days you have a slow market?
>
> A. Well, gentlemen, I believe I told you when I first came in here that I sell cow stuff, and I don't like to say what a steer man could do. * * *
>
> A. I have seen a man sell a great many more than five carloads in a day.

Q. How recently?
A. This summer.
Q. Do you know how many carloads that man did sell on that particular day?
A. No, not the exact number.
Q. Could you *approximate it*, about how many?
A. Ten."

Further from the findings, paragraph 125:

"The owner of one of the large commission firms testified that taking the average of the market as cattle come, he and two salesmen could sell fifteen cars per day."

The witness was Edward J. Lawler (R. Vol. II, p. 869) of the firm of Lawler Brothers. Mr. Lawler testified (R. Vol. II, pp. 878-880):

"Q. I wanted you to assume now that you and two others, you and two other salesmen had fifteen carloads of steers, single ownership, to work on, whether you believe that you three would sell those fifteen carlots per day on an average throughout the year for all market days?
A. Yes, sir.

* * * * *

Q. Do you have business arriving to your firm that will admit of the employment of a salesman so that they can sell five cars on the average per person per day of steers or other cattle?
A. I would not think so. * * *
Mr. Boyd (Continuing): Well, if the business of your firm will admit or you think you would be able to sell, on the average, of fifteen cars a day, why did you not sell them all yourself, because that average approximates two-thirds of all the business that your firm handled during the entire year with all of the force you had.
A. Well, it would not be possible to sell fifteen cars every day myself and do it justice.
Q. With the total number of cars handled by your firm in cattle, all kinds, truck, rail and otherwise was 4,496 cars, 15 cars a day for three salesmen amounts to 3,000 cars per year, assuming there are 200 market days, each and every day. Do you follow me?

A. Yes.

Q. Now on that basis do you believe that you had too many men working for you during the year?

A. Well, I know that we haven't.

Q. Well, if your men, if you expect, would expect your men to be able to handle and sell fifteen carloads per day, that is, every market day, why do you keep as many salesmen as you have in view of the fact that the average of your salesmen was 642 cars per year or the average per market day of a little over three cars? * * *

A. Well, we find it keeps us busy handling what we are getting with the help we have got. I thought our range was higher than it is.

Q. Do you still think you could handle fifteen cars per day with the three men on each market day of the year?

A. Not in the way they come (R. Vol. II, p. 878.)

* * * * *

Q. Then, you do not intend that your testimony should be used for the purpose of indicating what your salesmen could reasonably be expected to do in handling the type of receipts that come to your firm?

A. No I figured our percentage was higher than it is, I didn't know it would run so light.

Q. What were you basing your answer on, what you thought your salesmen were doing?

A. From the fact that we seem to be busy all the time, early and late (R. Vol. II, p. 880).

Mr. Lawler further testified (R. Vol. II, p. 883):

Q. And your answer was based upon a misunderstanding or a lack of knowledge as to what your actual performance was during 1932?

A. I would say so.

Q. And, in making the answer you were considering in part at least your actual performance, or what you thought your actual performance was?

A. Yes.

Q. And about that you say you find you were mistaken?

A. I do.

The next witness is credited with saying:

"The calf salesman for this firm testified that he

had handled about 1,500 calves on one day in 1933, and that his assistant had sold only a few out of that number." (R. Vol. I, p. 144.)

The witness was Mr. Wm. F. O'Meara (R. Vol. II, p. 591):

"I have had occasion to examine the records with regard to the 1,500 calves that I testified about being sold yesterday. I ascertain there were 1,370, on April 4th, of this year. I do not remember the state of the market. I do not know the number I sold and the number Mr. Lawler sold. Mr. Lawler generally supervises my work in connection with the handling of calves. He is the proprietor of the firm. I do not remember how I brought about a clearance or how I sold them on April 4th, that was our largest run this year. It is not usual that we would have one-third of the total car receipts as was the case on April 4th. The day was unusual in that the bunches were all large. The number of owners were fewer than we would ordinarily experience in a run of that size. And it took a fewer number of trades than we would ordinarily have experienced if the bunches were smaller."

The Secretary credits the next witness with saying:

"The owner of one of the respondent commission firms whose business is being cleared by another firm testified that he would want 150 carlots of cattle per month in order to set up his own organization. He stated that it would depend upon the amount of cattle whether he would need an extra salesman." (R. Vol. I, p. 144.)

The witness said (R. Vol. II, pp. 813-820):

"I suppose if I had 150 loads a month, it would be ample to get back on my own and re-establish my own firm. As to how many I believe I would be able to handle without employing another salesman; there are two or three different classes of cattle that come into the market. If you are selling all your cattle and you should happen to get a big run of butcher stuff, that would require all your attention, if you had a run of steers on the same day you would not be able to give one or the other enough attention, you would

have to have some help. Yes, I said if I had 150 loads a month I would feel justified in starting back into my business on my own. I did not have any class or kind of cattle in mind, just taking them as they come. Now, taking them as they come, it would all depend on the kinds of cattle I have, about how many I would feel I could handle before I would want or need to employ another salesman. If my week's supplies come in one day, I would have to have plenty of help.

Q. If they came to you as they did come when you were in business for yourself, would you need any help? * * *

A. Right away.

Q. What do you mean?

A. I would have to have an assistant right away.

Q. At what figures, at, 150 carloads per month, is that what you mean?

A. Or even less than that (R. Vol. II, p. 814).

* * * * *

Mr. Boyd (Continuing): Well, now, Mr. Mullen, in the month of January, you had 1,492 head of cattle arriving single ownership in straight cars; there were 50 owners, 50 accounts sales and 165 drafts; in other words, in that month, there were a little over three drafts per account sales; now do you know what business you handled in the month of May in that year?

A. No.

Q. Are you able to say the number of owners?

A. No.

Q. The number of account sales?

A. No.

Q. The number of drafts?

A. No.

Mr. Miles: Objected to as immaterial.

Examiner: Objection overruled.

Mr. Boyd (Continuing): There were 809 head, 21 owners, 21 account sales, and 83 drafts, during that same month; you had plural ownership in the month of February, 7 carloads of cattle in straight cars, 190 head, 27 owners and 59 drafts. * * * (R. Vol. II, p. 818.)

Q. The number of drafts into which you have to break up a shipment increases the number of sales necessary to be made to dispose of them? (R. Vol. II, p. 819.)

A. Yes.

Q. Now, if the 1,492 head that you received could have been sold in one draft, and I mean, by that, one sale, that would have required one amount of work?

A. Yes.

Q. And if you had been able to sell them in 100 drafts that would have been something different, would it not?

A. Yes, sir.

Q. And you actually sold them in 165 drafts. Now can you tell me how long it would have taken you to sell those 1,492 cattle if you had sold them in 100 drafts?

A. No, I cannot, no.

Q. And can you tell how long it would have taken if you had sold them in 200 drafts?

A. No, no one could do that—it would be impossible. We don't know how long.

Q. Then, can you tell how many carloads you can sell without knowing all the circumstances surrounding the situation at the time, can you visualize conditions over a year and decide what you can do either during that year or during the subsequent year when it takes accountants weeks to draw off the information to tell what you actually did and record it on paper?

A. No, I can not tell. * * *

Q. *Well, do you think that any thinking man can answer the question as to what a man can sell in a day and accurately reflect the facts?*

A. *It is impossible.* (R. Vol. II, p. 820.)

We submit that a proper consideration of the correct statements made by witnesses referred to in Section 125 does not furnish the slightest evidence which would warrant casting aside of the regular performances of the men who are responsible for the making of the base price for live stock in this country.

The extracts taken from Mr. Mollin's testimony incorporated above shows that he was entirely unqualified to furnish estimates of probable performance and taken on the whole his opinions are admitted by him to be second-hand hearsay.

The record contains no evidence which controverts or denies that the performance of the salesman must be measured primarily by the service necessary in completing a sale and the number and kind of livestock comprising the sale. The Secretary has arbitrarily and capriciously adopted the carload or head sold as the yard stick. The position of the Government below was that John Clay & Co. and the National Live Stock Commission Company salesmen averaging 1149 and 1043 carloads, respectively, per man, that other smaller firms, inefficient because of sales average per man of less than 1,000 cars, had so small a volume that as individual firms their experience is irrelevant in determining what can be done with a reasonable volume. The record is clear that it is erroneous to attempt to judge time required to perform a sale without knowing many facts—first of all, the number of sales required to dispose of a given number of head. John Clay & Co. and the National Live Stock Commission Co., the criteria cited so frequently by the Government, do not in fact furnish a guide for judging fair performance to be expected of others, or of the cost of selling to be properly applied to the market. The record shows and the Secretary and his advisers know from the evidence of Gene McAdams (R. Vol. II, p. 382) and E. G. Fulkerson (R. Vol. II, p. 790), that John Clay & Co. and the National Live Stock Commission Company have a cattle and calf clientele that is made up principally of the larger operators, making the carload-equivalent performance of those firms far above that to be expected of the average salesman who is as able and who works as hard, as long and as diligently in performing his duties as do Clay's and National's salesmen.

The record shows that John Clay & Company sold 125,194* cattle and calves which arrived by rail, and 8849

* The following figures are taken from and are computations made from Respondents' Exhibit 12.

cattle and calves which arrived by truck. To sell the rail business necessitated 14,834 drafts or sales; to dispose of the truck business required 2521 drafts or sales. The total is 134,643 head with 17,364 drafts or sales. Clay's salesmen averaged 8.4 head of cattle and calves per sale which arrived by rail. Clay's salesmen average 3.1 head per sale which arrived by truck. Clay's truck business was 6.6% of their total business. The market average per salesman was 4.8 head of cattle and calves per sale on rail arrivals; 2.2 head of cattle and calves per sale on truck arrivals; and in the market receipts of all firms 15% of the total business in cattle and calves arrived by truck.

The National Commission Company sold 125,251 cattle and calves which arrived by rail, necessitating 19,074 sales or 6.5 head per sale, 2 more head per sale than the market average. The same company sold 9945 cattle and calves arriving by truck, necessitating 3686 drafts or sales. This was 2.6 head per sale, substantially more than the average. Each of these firms had 5 cattle and calf salesmen.

The testimony of other cattle and calf salesmen was to the effect that they were fully occupied in performing their duties on most of the market days during the year.

From examination of the testimony of forty or more of the salesmen and owners connected with the firms which the Secretary regards as inefficient, it will be found that almost without exception, these firms are taxed to their capacity at the peak seasons of the year; and that the low average annual performance per car per salesman is due in part to the class of the business and the territories from which it is drawn, that their clients are small raisers of livestock marketing in small quantities, or marketing in such a way as to necessitate a low per head selling. This is confirmed by the following table showing the cars sold by such firms, with the number of drafts or sales necessary

to complete such transactions. This indicates conclusively that the Secretary was not attempting to determine fairly the amount of effort necessary to be expended, or the time required in the making of sales on the market.

CATTLE AND CALVES.

Name of firm	Total head sold	Total drafts or sales	Average number head in draft	Average number cars sold per salesman
Alexander, Conover & Co.	141176	21565	6.6	884
McCausland, Hoag & Vaughn	57413	8460	6.8	709
Lawler Brothers	157137	31214	5.0	642
Walters and Dunbar	83205	17104	4.8	532
Bowles L. S. Com. Co.	58259	14481	4.0	440
H. D. Copeland & Co.	46456	13539	3.4	282
Baker, Heyne & Co.	29241	9400	3.1	246
Swiney Brothers	19355	6088	3.2	226

Note: The foregoing data are taken from Resp. Ex. 12, Sch. 13, 16 & 24.

Dr. H. H. O'Neill, head of the Economics Department, St. Louis University, testified:

> "If the standard of performance or theoretical performance is way in excess of the actual performance, it is rather an evident fact that the standard or theoretical volume of sales is erroneous, because in any piece of scientific work we always subject our hypothesis, or theory, to the test of what has actually happened, or what has actually been accomplished; and so necessarily any standard that deviates by a wide margin from what has actually occurred must be wrong." (R. Vol. II, pp. 1131-32.)

The performance required of salesmen by the Secretary has no relationship to actual experience; and consequently the costs allowed by the Secretary for salesmen's salaries are inadequate and unreasonable.

Cattle Salesmen.

The Secretary in dealing with what he calls "potential salesmanship", sought opinions of a number of salesmen

as to their capacity in terms of volume of livestock to be sold within a fixed period of time. The witnesses generally expressed the view that the element of chance had so great an influence, that factors beyond their control so limited their operations, and the diversity of conditions under which they operate prevented any fair prognosis as to performance; that peaks and valleys occurred without notice to those performing the service and that any statement would be a mere guess because of constantly changing influences, which condition in itself creates one of the most complex problems of management.

The Secretary proceeded on the theory that the unit of work should be a carload of livestock, and that the efficiency and wage of a salesman should be in accordance with the units of such work performed within a given space of time, which is against all of the evidence adduced at the hearing. Such a standard is unknown in the practical management and operation of this business. This is the undisputed testimony of the numerous managers who testified.

The Secretary summarizes his quest for evidence in support of this theory and thus reaches the conclusion and finds "that it is reasonable to associate a salesmanship performance of 27,000 head, 1,000 car or carload equivalents, or above of animals of the bovine species with a salary of $4,500.00 and up" (R. Vol. I, pp. 149-150); the yearly performance expressed in terms of carloads, together with the salaries of all salesmen, are set out in Respondents' Exhibit No. 12, Schedule 24, the arithmetical average being 392 carloads or carload equivalents.

The table below compares the actual cattle and calf salesmen of the Chicago market for the year 1932 with the myth-

ical salesman set up by the Secretary of Agriculture. The data in this table is found in Respondent's Exhibit 12, Schedule 24-A, Sheet 4; petitioners Exhibit No. 9; and the Findings of the Secretary; and calculations made therefrom

Actual Cattle and Calf Salesmen	1932	Secretary's Cattle and Calf Salesmen
217	Number employed	85
$5,608.08	Average salary	$4,500.00
10,584	Number of head sold (average per man)	27,000
392.	Number of cars sold (average per man)	1,000
85,230	Number of cars sold	85,230
$.4024	Salesman's salary, per head	$.1667
1,000	Active market hours per year	1,000
2 hr. 32 min.	Time to sell a car	60 min.
5.65 min.	Time to sell a head	2.22 min.

From the above table, it appears that the actual number of cattle and salf salesmen employed in 1932 was 217; the Secretary would reduce this number to 85. The average salary would be reduced from $5,608.08 to $4,500.00.

Only 22.18% of the salesmen sold 500 or more cars during 1932. In other words, *over three-quarters of the salesmen sold less than one-half of the 1,000 cars demanded by the Secretary.*

We turn to the evidence.

In computing what he termed a reasonable allowance for salesmen's salaries, the Secretary made performance demands. Neither the performance required nor the salary allowed have any relationship to what salesmen can do nor to what they can be purchased for.

The Secretary has failed to give proper weight to the undisputed testimony of salesmen that their work is governed by conditions entirely beyond their control. What they receive in shipments, the nature of such receipts, the time of the day or night, or day of the week, are so governed; the action of the buyers and unwillingness to buy

at satisfactory prices, all or a part of what he has for sale, places his performance beyond his control. Whether there is much or little in volume to sell on a market day, he must be at his sales pens (R. Vol. II, pp. 777-78), keeping constantly informed on the action of the market, which can only be learned by observation as the market progresses throughout the day—to classify cattle in one's mind, they must be seen—and as livestock arrives throughout the market hours, he must be available to receive it and to proceed to sell with as little delay as possible. In a word, eternal vigilance is demanded.

At paragraph 117 of the Secretary's findings (R. Vol. I, p. 137) the Secretary discusses "reasonable unit cost plus reasonable unit profits to be covered into reasonable commission rates."

At Section 122 (R. Vol. I, p. 141) the Secretary made the following finding:

> "The rate payer should not be expected to pay in the form of rates an amount for the services of a salesman in selling his livestock greater than is necessary to employ a salesman of first-class ability, handling a volume of business which will utilize his time with a reasonable degree of efficiency. In this proceeding some salesmen testified that they might spend an entire day showing a few head or a few carloads of livestock, and that the entire trading period would be required to sell them. However, that fact does not establish the efficiency of such salesmen for the reason that they could possibly have shown and sold other livestock at the same time. The volume of business which a salesman can efficiently handle is an important factor in the determination of a reasonable allowance to be made for salesmanship. Respondents themselves do not contend that the rate payer should pay rates which would sustain at a living wage a salesman who could handle only one car a year. Others testified that if a salesman did not have more than 50 cars a year he should get off the market. Confronted with these conditions, the question arises as

to what is the criterion to be adopted for a reasonable salesmanship performance.'"*

A picture of market conditions and operations, demonstrating that a finding as to what should be done can be made only on a basis of what is done, and not on a basis of prophecy, is shown by the testimony of witnesses.

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* Section 117 continues:

"The owner salesmen and employed salesmen of respondent commission firms are, as a result of years of experience, qualified to express opinions with respect to a reasonable salesmanship performance. They are familiar with the conditions under which livestock is sold from day to day, from week to week, from month to month, from year to year, on the Chicago market. In commission rate proceedings heretofore held under the Packers and Stockyards Act opinions have been obtained from salesmen with respect to this question. The facts as to potential salesmanship capacity lie peculiarly within the knowledge of those who are actually engaged in selling livestock or who through long observation and familiarity with selling operations on the market are qualified to express opinions. With few exceptions witnesses, members of respondent firms in this proceeding, engaged in selling livestock were not frank to express their opinions, but on the contrary many of them declined to express an opinion or stated that they could not give an opinion. A careful reading of the record leads to the conclusion that this attitude on the part of the witnesses was brought about in part at least by the type and character of objections which respondents' counsel made on substantially all occasions when the question with respect to potential selling capacity was asked. It is apparent from the record that this failure on the part of the witnesses to testify with respect to the matter in question was the direct result of the improper and illegal character of the objections made, which had the effect of instructing the witness not to answer the question. In fact, it appears from the record that it was the deliberate intent of counsel to prevent the development of testimony with respect to potential selling capacity for the reason that in some instances respondents' counsel pointed out to the witness that such testimony had been used in other commission rate cases where commission rates had been reduced, and instructed the witness to remember that if he answered the question it might result in a reduction of his rates in this proceeding. In this connection the language of the Supreme Court is singularly appropriate as used in the case of *Knoxville* v. *Knoxville Water Co.* (212 U. S. 1, 18) where it is said * * * that the companies to be regulated will find it to their lasting interest to furnish freely the information upon which a just regulation can be based."

This constitutes a flagrant misstatement as regards the conduct of counsel or the attitude of the witnesses. The exact statements of both witnesses and counsel will be found at pages 358-362; 363-364; 368-373; 377-382; 389-392; 396-397; 401-405; 417-420; 440-443; 447; 455; 459; 466; 481; 491; 492; 514-520; 544-547; 552; 553; 556; 559; 586-587; 609; 661-668; 670-700; 727-728; 740-741; 749-751; 755-759; 814; 828-829; 831; 846-849; 855-868; 870-871; 873-885; 889; 897; 899; 900; 901-902; 906-907; 919; 921 of Vol. II of the record. These questions and answers we believe demonstrate incontestably the futility of expecting categorical answers, or in fact any answers other than those made to questions of the type propounded by the Government. In paragraph 108 (R. 132) the Secretary refers to the assistance given him by the appellants and the Government accountant refers to their "cooperation" as "excellent." (Govt. Ex. 49.)

Mr. E. G. Fulkerson, a witness called by the respondents, testified at (R. Vol. II, p. 771) in regard to the matter of estimating the amount or quantity of cattle that can be sold on the Chicago market. The questions and answers are as follows:

Q. Tell me, if you will, please, the conditions which you as a salesman of long experience and as an employer of cattle salesmen, believe must be known before an estimate as to the amount or quantity of cattle that can be sold on the Chicago market may be made?

A. Well, there is no way of estimating that that I know of, Mr. Boyd. One day we have orders or our shippers will have pretty good orders for shipping cattle, and the next day they will be light on shippers, and may be the day that they have good orders for shippers, the fellows on the house cattle will have light orders, and it is mighty hard to tell how, I would not know how to answer that question. I don't get the thread of it, some way, I don't believe—you had better modify that and ask me that over so that I can understand it thoroughly.

Q. Would you read the question?

(Whereupon the question was read.)

A. I don't think there is any way of knowing or telling how many cattle a fellow can sell or estimate it. I would not know how to. You have got so many things that come in there that you have got to analyze. It is according to your receipts, according to your demands, and take it now, we have got so many different varieties of cattle, that you have got to get buyers to buy them, that it is hard for me to answer that question correctly."

(R. Vol. II, p. 770):

Q. The record shows that you handled in head per draft 5.82. That the market average was 4.14. Does that indicate to you that your salesmen would have necessarily a greater performance by reason of that fact than the market averages?

A. It would indicate to me that we get them in a little larger bunches.

Q. And are able to sell them in larger bunches?

A. Larger bunches without sorting them quite so much.

Q. That in your case, the drafts per carload of cattle and calves was 4.58; that the market average was 6.85; which would indicate what with reference to selling?

A. That we sold them in larger bunches, wouldn't it?

Q. Is that what you think is a fact?

A. Yes, sir.

Q. All of these conditions, would, in your judgment, enable your salesmen to perform a larger amount of work throughout the year?

A. Yes, sir.

Q. And the fact that your customers ship in larger numbers per consignment, permitting a larger number of head to be sold per sale, enables your salesmen to have a higher performance?

A. Yes, sir.

(R. Vol. II, p. 777).

The witness continued (R. Vol. II, p. 777):

In the case of two firms having salesmen of high standard and good reputation, in the sale of a similar number of cattle, one will be able to sell at the market and sell out early, and the other will be required to hold and sell out late, that happens every day here in the yards, and the time I sell out depends upon the rapidity with which I can perform my end of the work, and the willingness of the buyers to buy. On bad markets, buyers deliberately hold back and delay their operations and in the case of heavy runs. They will purposely look at cattle slowly under certain conditions and do a lot of unnecessary talking or anything else to delay their operations. The purpose of that generally is to sound the market and buy them as cheaply as they can, and get the fill out of them later in the day. If buyers seem to be operating slowly, we expect them to do a lot of unnecessary and unusul talking, that is one of the evidences of attempting to slow down the trade that we encounter. And they will go back and look at cattle the second time for the same purpose before they leave your alley, sometimes oftener than that. The methods employed by buyers when they

have set about to attempt to buy at lower prices, they lay back and wait and stall and won't bid you until late in the day. That does not mean they are not taking our time or they are not looking at the cattle.

* * * * *

Q. What is the least performance you would expect of one of your cattle salesmen and still keep him on the payroll as far as volume handled is concerned.

A. That is so uncertain, Mr. Dagger. Some days you would only have just a lot or two and other days you would have a pretty liberal run. There is no way of telling that. You can't fire a fellow because we happen to be light for a day or two or a week. The next week we might be heavy again.

Q. Taking it for a year?

A. I would not know about that. There are five of us who sell our cattle.

Q. The employment of a cattle salesman or any salesman is a business proposition, is it not?

A. Sir?

Q. The employment of a salesman by a firm which is actively engaged in business is a business proposition, is it not?

A. Yes, sir, it is." (R. Vol. II, p. 788.)

Edward J. Lawler is a proprietor of one of the large firms at the yards, which started in busines shortly after the Civil War. He is a steer salesman and employs four steer salesmen besides himself. Employs another salesman to sell cows and heifers. Another salesman sells the bulls and still another sells the calves.

The names and salaries of these salesmen are shown on Respondents' Exhibit 12, schedule 24-a, which shows that the seven salesmen sold 4,496 cars, or an average of 642 cars each. This compares with the market average of 392 cars per salesman, and with a requirement fixed by the Secretary of 1,000 cars.

Mr. Lawler testified (R. Vol. II, p. 872) that he did not measure the value of the salesmen in his employ by the number of carloads of livestock they can sell; that that is

not a fair basis in his judgment to estimate the worth of a man; that he does not think it is the prevailing practice at these stockyards to determine the worth of a man by the number of carlots he can sell; that the sale of carlots as such are the exception rather than the rule; that the sales he actually makes range from sales of one animal up to sales of a carload, and in rare instances, the sale of more than one carload at the same price.

The witness further testified that cattle prices range from the top price downward until the lowest sale price that is reached; that between the top and the bottom prices will be livestock which will sell at a difference of five cents per hundredweight on the various grades and classes; that the smallest division in price for one hundred pounds is five cents on any particular day, so that cattle ranging from $9.00 to $10.00 would have twenty price ranges, and so on down with each front figure there would be twenty variations for each dollar in price, so that if the price ranged from $4.00 to $10.00 there would be 120 variations in price on the same day's market.

Salesmen must know in what price variation his cattle fall and demand and be able to get that price.

The complexities of operation are illustrated by the fact that during the month of January, 1932, Mr. Lawler's firm received and sold cattle, single-ownership, arriving by rail, two cars containing 35 head of cattle sold in one draft; one car contained 30 head of cattle sold in 11 drafts; two cars containing 51 head of cattle sold in 16 drafts; two cars containing 52 head sold in one draft; one car containing 24 head, 10 drafts; one car containing 20 head, one draft; one

* A consignment, for the purpose of assessing selling charges, is all the livestock of one species delivered in the (R. Vol. I, p. 191) name of one person to one market agency to be offered for sale during the trading hours of one day.

A draft is all of those animals in one consignment weighed as a single sales or purchase classification. (R. [redacted] I, p. 192.)

car containing 36 head, two drafts; one car containing 36 head, 14 drafts. (R. Vol. II, p. 870.)

During the same month, to further illustrate the diversity of service required, Lawler's firm received by truck, a consignment of forty head of cattle sold in two drafts; 11 head of cattle sold in 5 drafts; 9 head of cattle that sold in 4 drafts; 34 head of cattle that sold in 3 drafts; 6 head of cattle sold in 4 drafts. He had a great many one-head consignments that sold separately, and a great many of two-head that were sold in two drafts and many of four that he sold in three drafts, and so on. The same situation prevailed in each of the months of the year, not in precisely those types or amounts, but the mixtures and the drafts varied from shipment to shipment, from day to day; and from month to month. He stated that it was necessary to sell them that way to the best advantage. (R. Vol. II, p. 871.)

Mr. Lawler stated that he could not recall from memory the market conditions for the various grades of animals, or the condition of the market on any day in 1932 covering the grades and classes that he sold; that he could not recall the length of time from memory that it took to handle any consignment of livestock that he handled in 1932. (R. Vol. II, p. 871.)

He said he would not be able to answer as to the number of cars that a salesman ought to handle in a year to be an efficient salesman, notwithstanding the fact that he had a great number of years of experience on the market and had sold a great many cattle, and had employed a number of salesmen, had observed their work and still could not answer. (R. Vol. II, p. 873.)

Mr. Lawler further testified that he had operated his firm during the years 1931 and 1932 on as little expense as was possible to render proper service to shippers (R.

Vol. II, p. 874); that it would be impossible in the management of his concern to bring about a condition whereby his concern, which has a diversified business, could create income which would equal or exceed his expenses each week, or each month, depending upon the fluctuation of receipts. It would be impossible to change either. He stated that the business he and his salesmen sold was sufficient to keep them fully employed during the year in the performance of the service which he renders (R. Vol. II, p. 877).

The testimony shows without exception that trucked-in livestock is more difficult to handle than shipments arriving by rail. The table (R. Vol. I, p. 76) shows the rapid increase in the proportion of trucked-in to rail receipts. The practice adopted by the government of reducing trucked-in livestock to carload equivalents is erroneous. Such a method does not reflect the evidence of work necessary to sell livestock. The number of sales and the size of the drafts measures the work and is the proper method of cost determination (R. Vol. II, pp. 909, 946). Government counsel had full knowledge of the different conditions existing at Chicago in this respect as compared with those existing in Omaha at the time of the hearing in *Tagg Bros.* v. *U. S.*, 280 U. S. 420.

D. L. Swanson, a witness called by the Government was the manager of the Chicago Producers, a co-operative, which firm handled the largest volume of business on the Chicago market during 1932. He testified (R. Vol. II, p. 607):

> "Our volume was great enough to demonstrate efficiency in the matter of performance of the men engaged in the business. Our business is substantially as great as the entire business at Oklahoma City; and it was as large, or almost as large, as the entire business at Wichita, so that we have in this instance a firm as large as the total business done by all agencies at these markets. The only record we have kept as

to actually what our individual salesmen do in the way of volume of performance is in the personal inspection and checking up and then on the averages. Our average per salesman in the cattle department was about 700 cars, 7 salesmen, and about 5,000 cars or equivalents (R. Vol. II, p. 608); * * * a figure which should not be regarded by comparison as one to be obtained by a smaller firm which would not admit of such diversity. I think in our particular case we have a volume sufficient to produce the maximum in performance in connection with our employees."

The Secretary states in his findings (R. Vol. I, p. 139) that the salesmanship function "is one of the important items for which an allowance must be made in the reasonable unit costs." Appellants contend that he has arbitrarily arrived at a performance per salesman for association with a salary allowance, by the substitution of the "judgment principle", an invention of his own to avoid accepting results of experience, in his so-called efficiency salesmanship theory. He has erred in refusing to adopt the actual performance of salesmen to measure quantitatively the work which it is fair to expect in handling supplies of livestock. He had the correct average of salesman for each firm and for each species—cattle and calves not being separately calculated. (Respondents' Exhibit 12, schedule 24-a.) He has done even greater violence to the renowned skill of these men in dealing with them qualitatively, whether they be owner salesmen or employed salesmen. The Secretary refused at all times to recognize the incontestably proven fact that high head sale performance was almost invariably the direct consequence of favorable conditions of operation, notwithstanding the testimony of witness after witness to that effect. The testimony regarding the analysis of sales, explains beyond the possibility of contradiction that low performance did not arise from any lack of efficiency on the part

of the salesman, but from a multiplicity of necessary sales, which factor was greatly diminished in the case of high head performances.

This condition constituted one of the features which definitely distinguishes this case and the *Tagg Bros.* case. This matter of varying performance is further explained by the rapid change from rail to truck receipts together with the large reduction in the number of head which may be sold in one lot. This is a further distinction between this and the *Tagg Bros.* case. The deceptive part of the findings dealing with opinions which were expressed regarding sales ability of salesmen is: many low-volume salesmen, probably could have sold the same large number as were sold by the salesmen of high performance; but, the high performance salesman could not likely have sold any greater number of the type of receipts disposed of by the salesmen of low performance.

The difference in performance may be accounted for on no other hypothesis than the proven difference in the number of sales necessary to effect a clearance. Furthermore, any other hypothesis would be a slur on the providential nature of these employers of salesmen, for certainly it may not be presumed that they would employ four or five salesmen to do the work of two salesmen, or that two salesmen could do the work of four or five.

L. W. Conover, the principal owner of Alexander Conover and Martin, testified that he had been in the live stock commission business at Chicago for over forty years and had been selling cattle at Chicago for over forty years (R. Vol. II, p. 952). He explained that if his business came to the market in the same way in which the business of "Firm 42" arrived, he would either have to have more salesmen or would have to just get a ticket for them instead of selling them. He had an average of 884 carloads

per salesman, using six salesmen. The fact that it takes one salesman all day to sell one carload broken up in fifteen or twenty pieces would not indicate that the service he renders to the shipper is not worth the price that he charges. As the number increases, it becomes more expensive. It takes more time and effort and more salesmen (R. Vol. II, p. 957). He stated (R. Vol. II, p. 962) it is harder now to operate and manage a business than it has ever been in his forty-odd years.

Respondents' Exhibit 12, Schedule 16 and Schedule 24, show that The National Live Stock Commission Company sold

5,214 cars of cattle and calves
5 salesmen were used
23,898 drafts
1,043 average cars per salesman

Walters & Dunbar Commission Company.

3,189 cars of cattle and calves
6 salesmen were used
17,104 drafts
532 cars per salesman

Schroeder Commission Company.

628 cars of cattle and calves
4 salesmen were used
4,091 drafts
157 cars per salesman

Stockmen's Commission Company

1,375 cars of cattle and calves
5 salesmen were used
12,875 drafts
318 cars per salesman

Silas Palmer Commission Company.

1,395 cars of cattle and calves
4¼ salesmen
15,476 drafts
328 cars per salesman

Swiney Brothers Commission Company.

673 cars of cattle and calves
3 salesmen
6,088 drafts
226 cars per salesman.

This demonstrates the wide variation in the amount of work done in order to dispose of a carload equivalent.

Mr. Schroeder has been selling cattle for 25 years (R. Vol. II, p. 915). He stated that on most market days his salesmen were busy selling his mixed stuff, requiring a large number of sales to dispose of the number of animals handled. (R. Vol. II, p. 917.) He gets to the yards at six o'clock on Monday morning and at seven o'clock other mornings. His other salesmen get out earlier; they work until they get through. If they finish in good season they get through around four or five o'clock in the afternoon, but where there are lots of drafts to handle they work as late as eleven o'clock. The greater the mixtures, the greater the number of drafts, the longer it takes to handle the work in the yards as well as the work in the office.

Charles Dunbar, who has been working in the yards for 39 years, joined his firm as a partner 25 years ago (R. Vol. II, p. 508), was asked the following question (R. Vol. II, p. 515):

> Q. Now, Mr. Dunbar, based on your experience over the course of years, I want you to take conditions as you find them throughout a calendar year; I will ask in your opinion how many car lots of steers, single owner, to a car, in your judgment, you could sell if you had all that you could sell?
>
> The Witness: All I could sell, is the only answer I could answer, if I had all I could sell.
>
> Mr. Miles (Continuing): If you had all the supplies that you could handle, as many car lots as you could handle, how many do you think you could sell?
>
> (Objected to by counsel for appellants; objection overruled.)
>
> The Witness: There has never been two days alike

in all of my 39 years' experience in the yards that I can recall and it would be utterly impossible to tell you whether to-day I could sell two or twenty, or 200 or 2,000 carloads that day.

Mr. Miles (Continuing): And, for that reason, I have taken it over the course of one year, not for a single day.

A. Taking it back for one year and I can't strike an average. That is utterly impossible for any mind to grasp, comprehend and give a definite answer.

At R. Vol. II, p. 523, Mr. Dunbar stated that a larger number of owners, and a smaller volume of business has been going on for a number of years; that they have had a considerable increase in the amount of truck business, which formerly came by rail. Also that their salesmen probably handled about all they could and do it efficiently, considering the way the cattle arrived into the Chicago yards. He considered the salesmen of Walters and Dunbar very efficient in every respect and there were days when they worked almost beyond their limit to accomplish the sales they did during the year 1932. He said he would grant there were days when they did not have heavy receipts, but that was due to the country not shipping them in and distributing them in a more even manner; that you have to carry a force of men to handle peak day business, but you can't figure on a peak day coming just occasionally.

T. E. Swiney, one of the partners of Swiney Brothers, who has been engaged in the commission business about forty years (R. Vol. II, p. 728), testified that if the record showed that his firm sold 673 cars of cattle during the year, with three salesmen, an average of 224 cars per salesman, that he did not believe that the business could have been done properly and his constituents been properly served by fewer salesmen than were engaged during 1932. (R. Vol. II, p. 730). He stated at (R. Vol. II, p. 733) that he did not believe in looking back over the business that they could reasonably have been expected, through the exercise of

proper forethought, to have spent less money in the conduct of their business in serving their customers than was spent; that he did not recall any individual item or any item of expense that was not warranted by the circumstances.

When it is found that a theory depends for its validity upon entirely unnecessary assumptions, the theory has not gone to the roots of the problem. The entire theory of the Secretary appears to be an attempt to set up fanciful standards that have little or no relation to the actual experience of expert salesmen and owners with wide reputation and distinction. He has thus refused to adopt the experience of the market.

Governor Howard M. Gore of West Virginia, who was one of the arbitrators, and later Secretary of Agriculture in the cabinet of President Coolidge, later Governor of West Virginia, and at the time of testifying, Commissioner of Agriculture for the State of West Virginia (R. Vol. II, p. 1136), testified that he would accept the performance of the average salesman in the Chicago market as evidence of a sufficient performance to justify the making of a rate; *and that a carload of livestock does not represent to him a unit of work, nor a fair basis for arriving at the amount of work; that it may not be said with fairness that a man must sell a given number of cars of livestock in a given length of time; that is not a true yardstick at all.* (R. Vol. II, pp. 1148-1150.)

Hog Salesmen.

There is a considerable spread in the average number of cars sold by salesmen for the different firms. (Resp. Ex. 12, Sch. 24-B.)

The Secretary explains that he has associated the selling of 87,000 head of hogs and above with a salary of $3,600 and above, (R. Vol. I, p. 150). Using 82 head as a basis

for arriving at the number of cars, shown at top of page 147 R. Vol. I, he would associate 1,060 cars or car equivalents to the sum of money shown.

In the case of hogs there was not a single firm whose salesmen averaged, in 1932, over 1,060 cars of hogs for the year. The highest average was 903 cars; and the average of all the appellants was 385 cars. The Secretary would pay to a hog salesman who sold three times as many hogs as the average a salary of $3,600 or $588.93 less than the amount actually paid, namely, $4,188.93 average. (Respondents' Exhibit 12, Schedule 24-B.)

Swanson, Gilmore, and Castenholz sold 1,299 cars or car equivalents during the year 1932. They used three salesmen or an average of 433 cars per salesman, slightly above the market average. Mr. Gilmore was on the witness stand (R. Vol. II, p. 933) and at pages 934 and 935 indicates the kind of hog business and the methods which have to be employed in sales in that business. Mr. Gilmore's testimony throughout is a complete justification for the use of three salesmen to sell the amount of hogs in a year which the Secretary concludes should be sold by one salesman drawing a salary of $3,600. One of the employed salesmen, Mr. Mahoney, drew a salary of $4,804.85 and the other salesman J. F. Gilmore drew $3,400, or $8,204.85 for the two employed salesmen. Mr. Mahoney, one of his salesmen, has been with the firm selling hogs for over twenty years. Mr. A. Gilmore, the owner, who has been selling hogs on the Chicago market for forty years, (R. Vol. II, p. 936) states that three salesmen were far more necessary with 1,299 cars of hogs to sell at the present time than one salesman with five times that many hogs fifteen years ago. He stated that the salesmen are working faithfully and that it is possible they could have sold more if they had had room to handle them in; that some days they could have

and that that some days it would have been an impossibility. The day the witness testified he did not sell out all of his hogs. On the early market a few hogs sold steady and later the market was five to ten cents lower, and closed very dull at the decline, with a good deal of underweight bottom stuff at more than decline and hard to move. His firm carried over one load of hogs unsold that arrived early in the morning, had had the benefit of the shipper market and the late market. He did not receive a satisfactory bid for them.

When questioned as to the average of 433 cars per salesman (R. Vol. II, p. 937) Mr. Gilmore stated that the efforts and the work that every individual puts forth now in proportion to the amount of business that they handle is easily five times what it was ten years ago.

He said that on the previous Tuesday, as an example, he had gotten to the yards at seven o'clock in the morning and that they had a large amount of picayune truck stuff, a lot of it; that the salesman got to the house from the hog alley at four o'clock with a large number of scale tickets; that he left the office that night at a quarter to twelve.

This witness writes a letter to each owner; dictates letters and also writes them himself on the typewriter; (R. Vol. II, p. 939). On the Tuesday in question, (by referring to his yard book which he had with him) there were 301 hogs with about fifty ownerships represented. Included in that number were five rail cars and three pieces of loads arriving in single deck cars. There were 245 head in the five loads and three pieces. There was one load with 33 head in it. The hogs were sold at two minutes to three, (R. Vol. II, p. 941), and weighing finished about four o'clock when the salesmen went to the office. All employees worked that night until eleven to eleven fifteen. The owner worked until a quarter to twelve and had his supper at 12:30 A. M. (R. Vol. II, p. 942.)

This witness, Gilmore, and his partner, lost $1,200 apiece for 1932. (Petitioners' Exhibit 2; R. Vol. I, p. 266.)

The Secretary states in his review of the performance of hog salesmen (R. Vol. I, p. 145) that H. W. Dye, a salesman for Dolan Ludeman sold all but five percent of the 79,505 hogs received by that firm. Respondents' Exhibit 12, schedule 24-C shows that Dolan and Ludeman sold 996 cars or car equivalents or an average of 797 cars per salesman in 4,235 drafts. The average is brought about by using a salesman less than a full year.

The same exhibits reflect that Swiney Bros. sold 1273 cars with an average of 637 cars per salesman in 9,814 drafts. Mr. Swiney on the stand approximated that he sold five-eighths of the receipts and the other salesman sold three-eighths (R. Vol. II, p. 738).

The record discloses that hogs do not come to the market so that a salesman may "sell ten loads of butcher hogs a day where each load belongs to a different owner" (R. Vol. II, p. 1045). There were 15,545 cars of straight car single ownership hogs (Table, R. Vol. I, pp. 130-131) received at the Chicago market during the year 1932. A small proportion of them would be straight loads of butcher hogs. Using this testimony as a basis for salesman performance in selling hogs, it would only be necessary to employ five or six salesmen to sell the entire 1932 receipts, whereas excluding the owners who sold hogs, there were sixty-one salesmen (R. Vol. I, p. 148). What has been said in regard to the methods employed by the Secretary in reaching his theoretical performance to associate with $3,600 is equally applicable to his theoretical performance and theoretical salary in the case of hogs. The record does not support such a theory.

Sheep Salesmen.

In the case of sheep, the Secretary's requirement deemed to be reasonable, is that a salesman should sell 270,000 head or 1,035 cars per year. This performance is associated with a salary of $4,000. Actual performance in 1932 was less than half as many cars per salesman, namely 465.*

Of the appellants selling sheep, only two had a salesmanship performance equaling that required by the Secretary to be reasonable. The average salary paid to sheep salesmen in 1932 was $4,451.13.*

The Secretary having rejected the pragmatic test of the experience of the market in his requirement of performance, only two appellants having reached the goal required, he was compelled to look elsewhere in support of his findings.

The Secretary found (R. Vol. I, p. 145):

> "127. A witness who is a representative of a live stock producers organization and has had extensive experience in shipping livestock to central markets stated that he had seen one salesman sell 18 or 19 double-deck cars of sheep in one day. His observation covered consignments containing as much as five or six cars each and he stated that it would in his opinion require more time to sell the same number if they were single car consignments than if they were consignments of five or six cars."

F. R. Marshall, the witness referred to (R. Vol. II, p. 384) is the Secretary of the National Wool Growers' Association. He testified that he is part owner of a sheep outfit located in the State of Washington which ships twenty to twenty-five cars per year to the St. Paul and Chicago markets; that he had not seen the audits made by the government representatives from the books of these respondents in this proceeding. He said that he did not keep a

* References: Secretary's order, Respondents' Exhibit 12, Petitioners' Exhibit 9.

diary but said that he had been in Chicago four to five times a year from one-half day to one day and a half; that he does not visit every pen or salesman while at Chicago, but tries to look at what is going on and see their difficulties, and see their side of the case, and that he knows they have difficulties.

Mr. Marshall was asked from his experience and observation what, in his opinion, would be a reasonable performance to expect of a good sheep salesman on the Chicago market, how many carloads in a year. Objection was raised that a proper foundation had not been laid for asking the question and the witness was not properly qualified, the objection being overruled. The witness then gave his observation. He said from his own observation that one concern has sold around possibly 18 or 19 cars, some time the first part of September 1931.

"Mr. Dagger: Was that all done by one salesman?

A. Well, the actual selling, my recollection was, well, that salesman, I think, the one particular *salesman had an assistant,* I don't know. I never hang around close when there is a deal going on. I think it is good business to be out of hearing.

Mr. Boyd: Did I understand you to say W. R. Smith and John Clay & Co., and handled by one salesman?

Witness: Two different firms handled numbers of sheep such as I have spoken of.

Mr. Boyd: On the same day?

Witness: Yes, sir.

Mr. Boyd: And the same number of consignments by each firm?

The Witness: By each firm. I said I knew they handled up to three consignments amounting to *15 to 16 cars* that I recollect of (R. Vol. II, p. 390-1). * * *

Mr. Boyd: How many salesmen were there?

* * * * * *

The Witness; I said, Mr. Boyd, that there is a head salesman, I was saying, just as I was interrupted, that I do not make it a point, in fact, I make it a point not to try to tag a salesman around when the buyers are in the alley,—whether or not his assistant took any part

in making that sale to the packer buyer or of selling the seconds to the packer or the thirds to the feeder, I do not know. I know he was in the alley with the head salesman, giving some help to the yarding and showing of the stuff, but just what part he actually had in the sale, I cannot say." (R. Vol. H, p. 391.)

From the Secretary's findings:

"Another witness, who is a sheep salesman, stated that he had sold as high as fifteen carloads of sheep in a day alone and unaided." (R. Vol. I, p. 145.)

Lee Merrion, the witness referred to (R. Vol. II, pp. 425-6), testified that it would be an exceptional case where he would be called upon to sell fifteen cars in a day. That it would be difficult for a salesman on this market to accomplish. In the second place, it would be impossible to get the receipts.

All of the principal sheep salesmen at the Chicago market explained their activities in detail, and there is absolutely nothing in the record of testimony to justify a deviation from the market average of 465 cars per salesman (Respondent's Exhibit No. 12, Schedule 24-C). There were 23.34 full-time salesmen employed on the market during the year 1932, at an average salary of $4,451.13 (Respondents' Exhibit 12, Schedule 24-C).

Sheep commission business in some respects is different from that regarding cattle and hogs. The firms of John Clay & Company, W. R. Smith & Sons, and Merrion & Wilkins have a sheep commission business at most of the public markets where sheep are handled in large quantities at markets west of Chicago. John Swanson (R. Vol. II, p. 397), J. C. Eastes (R. Vol. II, p. 949) and James L. Merrion (R. Vol. II, p. 410). In the western sheep feeding section the bands of sheep are larger than they are when compared to the quantities raised by cattle and hog raisers. The firms of W. R. Smith & Sons and Merrion & Wilkins handle sheep and lambs exclusively. John Clay & Company

handle more sheep and lambs on a commission basis than any other organization in the country although they handle cattle and hogs as well.

John Clay & Company sold 514,283 head at Chicago in 8,086 drafts (Respondents' Exhibit 12, Schedule No. 4, Firm No. 18, Sheet No. 18, and Schedule No. 16, Sheet No. 1).

Merrion & Wilkins sold 519,091 head (same exhibit and schedule, Firm 57) in 7,870 drafts (Exhibit 12, Schedule 16, Firm 57).

W. R. Smith & Sons sold 269,367 head (Respondents' Exhibit 12, Schedule 4, Firm 90) in 5,961 drafts.

Each of the three firms had 2 salesmen. The total number of head handled by these 6 salesmen was 1,302,741 head in 21,899 drafts. All other salesmen doing business on the market, 17 in number, sold 1,103,264 head in 54,129 drafts. The 17 salesmen averaged 3,223 drafts per salesman. The 6 salesmen averaged 3,649 drafts per salesman.

The 6 salesmen doing more than one-half of the business on the market averaged 217,123 head. Their average salary was $6,666 (Respondents' Exhibit 12, Schedule 24-C). Their evidence shows that the sheep business at the Chicago market of necessity fluctuates very severely throughout the months of the year. In the neighborhood of 75 per cent of the total volume is marketed at Chicago during the 5 months of the year, December, January, February, March and April (R. Vol. II, p. 410).

One of the large sheep firms had fourteen times as many sheep to sell in January, 1932, as it did in July, 1932 (R. Vol. II, p. 410).

John Swanson, sheep salesman for John Clay & Company, testified that he could not say how many cars of sheep he could sell in a year (R. Vol. II, pp. 402-403).

The Government called three witnesses who were sheep

salesmen, Messrs. Swanson, Merrion and Marsch. In reading their testimony it is not possible to determine how many carloads or head they might reasonably be expected to sell during the year at Chicago.

The respondents called three witnesses, Messrs. Barsoe, Eastes and Burns. They did not estimate the amount of business that they might reasonably be expected to transact in a year or in a day, so as in the case of other livestock, there is no evidence in the record upon which the Secretary could base an estimate as to what might reasonably be expected of a sheep salesman at the Chicago market, so far as his performance is concerned.

Jas. L. Merrion, one of the partners of Merrion and Wilkins, states (R. Vol. II, pp. 422-423):

> "It would be impractical to attempt to reduce the organization, so far as skilled men are concerned, during the periods of light receipts and increase them in periods of heavy receipts. You could not find them in periods of heavy receipts." * * * "The length of time it takes a person to perform a given duty depends somewhat upon the characteristics of the individual performing the service; one may be lazy, one may not, one may be less active physically, the other may be slower, one may be less active physically and still be able to perform service more rapidly due to his familiarity with it. The fastest man in the performance of his particular function that Mr. Miles has inquired about might not serve in that instance the shipper as well as the man that might proceed more slowly, and the reverse may be true. The conditions on the Chicago market change fast at times.
>
> It would be difficult for me to enumerate the varied conditions that prevail throughout even one market day, without attempting to estimate or describe that multiplicity of obstacles that confront me in the performance as a salesman on the market of the great size of the Chicago market."

It follows that it was not possible either from the record of performance of the 3 firms, who had the greatest oppor-

tunity to operate at reduced costs by reason of their activities, for the Secretary to have found fairly either from the record or from the oral testimony, that it would be reasonable to expect salesmen to obtain a salesmanship performance of 270,000 head annually. The average salary paid all salesmen was $4,451.13 (Respondents' Exhibit 12, Schedule 24-C, Sheet 2), and the average salary of the 6 salesmen performing average sales of 217,123 head was $6,666 as against $4,000 fixed by the Secretary (R. Vol. I, p. 150).

It is very evident in determining the amount of salaries associated with a given performance that the Secretary has disregarded the evidence. We submit that he should have had regard to the very complex gradation of natural gifts and aptitudes in moral, intellectual and physical respects and should have recognized that in this business, to a less extent perhaps than in others, the total gamut is represented from those who are exceptionally reliable, energetic, ambitious, intellectual, efficient, to the opposite extreme, all accentuated by wide differences in education and training.

The Secretary and his aides devoted a lot of time and space in the record attempting to get witnesses to compare their capacities and capabilities with others, quite naturally with little or no success, apparently losing sight of the fact that these men are not trying to make records for speed in making sales, but attempting to get a price which will produce the greatest number of dollars and cents for the livestock they sell for their customers, and that in so doing these men are establishing every market day, the base price for all live stock sold in the United States.

The allowance for costs of business getting and maintenance is the substitution of the Secretary's judgment for that of the prudent management of the owners. There is no evidence in the record of waste or extravagance.

Business getting and maintenance is the term used by the Secretary and the market agencies to describe generally the different methods used to attract business (R. Vol. I, p. 119). The methods generally used may be designated as personal contact rather than advertising. Commission firms issue market letters to their customers varying in size and containing information upon prices at which various grades and classes of live stock have been sold and general market conditions (R. Vol. I, p. 119). Special circulars are issued by some firms, on occasion. By keeping account of customers and their special interests, the circulars are prepared for distribution at times when the customers are most interested in information regarding the market (R. Vol. I, p. 120).

The Chicago Daily Drovers Journal is a daily market paper published at the stockyards. Many of the commission firms subscribe to this paper for customers who ask for it and who have sufficient business to justify the expense (R. Vol. I, p. 120). The Secretary found that there was very little entertainment of customers, the rules of the Chicago Live Stock Exchange prohibiting it (R. Vol. I, p. 120).

Representatives of the commission firms make trips to the country to visit their customers. The purpose of these trips is not only to keep up friendly relations with customers but to advise in regard to the feeding and time of marketing and to appraise the livestock. The Secretary found that many of these trips, which usually occur during the week end when work in the yards is slack, are made at the request of customers who have livestock about ready

for the market, and who desire a salesman's judgment as to their fitness (R. Vol. I, p. 120).

Business getting and maintaining is discussed in the Secretary's findings in Paragraphs 81-86 (R. Vol. I, pp. 119-121); and in Paragraphs 139 to 145 (R. Vol. I, pp. 160-167).

The Secretary found, Paragraph 145 (R. Vol. I, p. 166) that a reasonable unit cost for business getting and maintenance to be covered into rates, should not exceed 9 per cent of the total costs found. This allowance is, therefore, 3.90c per head for cattle and calves; 1.20c per head for hogs; and 0.5c per head for sheep. These figures are intended to cover non-salary expenses for business-getting and maintenance. The commission firms have no regularly employed solicitors; it is the owners or salesmen who make the country trips (R. Vol. I, p. 163). In other words, business getting and maintenance expenses covered into costs for that function are the actual cash outlays in addition to the salaries of salesmen who make country trips, and in addition to the salaries of those employed clerically to compile and maintain customers' lists, prepare circular letters and the like.

The lack of relationship of the allowance made by the Secretary as reasonable business getting and maintaining expenses per head for each species is shown by the Government's own figures.

Paragraph 144 of the Secretary's findings (R. Vol. I, pp. 163-166) shows in tabular form the unit cost per head of non-salary expenses for each species for business getting and maintenance for the year 1932. These tables show that of the 84 firms selling cattle and calves, 63 had actual costs per head for business getting and maintenance in excess of the 3.90c considered reasonable by the Secretary; and only 21 had equal or less actual cost per head than the

3.90c. The median actual cost per head was over 6c, or 2c more than the amount considered reasonable by the Secretary.

In the case of hogs (R. Vol. I, p. 165), 70 firms out of the 85 who sold hogs had business getting and maintaining expenses in excess of the 1.20c allowed by the Secretary as reasonable; and 15 of the 85 firms had lesser cost per head. The median cost as shown in the Secretary's compilation at page 165 of the record is 2.33c. This expense was incurred by a firm as the table shows, which did a very large volume of business in hogs and yet the business getting and maintaining expenses per head was almost twice the amount considered reasonable by the Secretary's mandate. It seems significant that a firm which is shown throughout the record to be one of the most efficiently and economically conducted businesses on the Chicago market finds it prudent and wise in the judgment of its managers to expend almost twice as much for business getting and maintenance, in the case of hogs, as the Secretary deems wise.

In the case of sheep, only 6 firms out of 84 engaged in selling sheep had business getting and maintaining expenses per head within the range held reasonable by the Secretary. The median expense was 1.15c per head, a figure over twice that held reasonable by the Secretary (R. Vol. I, pp. 165-6).*

In the case of each species, an observation of the tables referred to on pages 164, 165 and 166 of the Record reveals that the firm incurring the least for business getting and maintaining, in general, did the least business.

There is no evidence in the record of waste or of extravagance, in business getting and maintenance expenses. Most

* The per head expenses for business getting and maintenance in the case of sheep is headed by the figure $1.0001 in the Record (p. 165). This is obviously an error in printing. The original order gives this figure as $.0001, a difference of $1.00.

certainly no presumption could exist that business management will expend sums in their judgment unnecessary. All business history teaches to the contrary. The administrative fiat of what is the reasonable per head cost for each species for this service and function must, therefore, have some foundation in the record. As we have shown above, there is no foundation in the actual experience at the market; and the absence of any evidence in the record that there were wasteful or extravagant expenditures, completely removes all support from the costs found to be reasonable by the Secretary, for business getting and maintenance per head. The Secretary's arbitrary judgment cannot support a finding. The only evidence in the entire record to justify the Secretary is not on wastefulness or extravagance but is the testimony of two representatives of livestock producer organizations,* who expressed the opinion, as abstracted by the Secretary (Findings, Paragraph 139, R. Vol. I, p. 160) that commission firms were entitled only to keep their names before the public and that rate payers should not pay through rates anything whatsoever to cover business getting expenses.

The function of business getting and maintenance is not only to secure and retain business but to serve the shipper of livestock.

Contrasted with the testimony of the two witnesses relied upon by the secretary is that of the owners themselves. From their testimony it appears that:

* Mr. F. E. Mollin, Denver, Colorado, Secretary of the American National Live Stock Association (R. Vol. I, p. 312-3). The bias of this witness is shown by the fact that his Association had adopted a resolution (R. Vol. I, p. 309) demanding that rates be reduced but who testified that he did not know what the rates were (R. Vol. I, p. 318). He further testified: "I have no information with reference to cost of rendering service at Chicago" (R. Vol. I, p. 319). The other representative whose evidence the Secretary relies upon is F. R. Marshall, Salt Lake City, Secretary of National Wool Growers' Association. He objected to "an allowance for expenses to the commission man in getting business and in maintaining the volume of his shipments which he receives to sell" (R. Vol. II, p. 387). He did not know what the actual expense of business getting and maintaining was, however (R. Vol. II, p. 392).

1. Solicitation is a service to the shipper of livestock.

2. Solicitation is to secure and retain business.

3. No unwarranted or extravagant expenditures were made.

Charles Dunbar, one of the proprietors of the firm of Walters & Dunbar, testified as follows:

> "Our other salesmen and I go to the country to examine livestock at the request of the owner, and we pay the expenses. Walters & Dunbar pays all the expenses when making such trips, and our salary included with the expense. As to my opinion as to the value of that character of service to the man who receives this,—to the owner of the livestock it is invaluable. It would be impossible to get an estimated value definitely because when you go to the country to confer with a man about his cattle, he may have a particular kind of cattle in his feed yard that, at the present time, would be selling exceptionally well, and just the opposite, there might not be a good demand at that time. Then, after you return from your trip, you have his cattle in mind, and you can order the cattle in on a market that will justify his coming at that particular time to obtain the most money for them. It is an invaluable service to the feeder of cattle, to have a commission man go out, and confer with him and watch the market, help him get his cattle in on a favorable market. Patrons that we serve in that manner expect it. * * * I have had many of them offer to pay my expenses for coming down." (R. Vol. II, p. 525.)

Further, this same witness testified that the amount expended by his firm for business getting and maintaining was "absolutely necessary," and "very moderate in the charges and expenses." (R. Vol. II, p. 534).

The per head non-salary expenses for each species of livestock of Walters & Dunbar for 1932 were higher than the amount allowed as reasonable by the secretary (Firm No. 45, R. Vol. I, p. 164-6).

The witness David Swanson, manager of Chicago Pro-

ducers Commission Association, a co-operative organization of farmers and shippers, testified on direct examination for the government, stating:

> "Naturally, I feel that the money that we have expended for advertising or soliciting, as I have heretofore described it, was neither extravagant nor excessive, but was the result of the exercise of sound judgment. I do not feel that in such expenditures we engaged in extravagances. We might have slipped once in a great while and spent a little more. We spent no more than would be expected in a business of this sort." (R. Vol. II, p. 606).

The business of Chicago Producers Commission Association, managed by the witness Swanson, is substantially as great in volume as the entire business in the yards either in Oklahoma City or in Wichita, Kansas (R. Vol. II, p. 607). This is a firm owned and managed by shippers and producers of livestock. *The expenditures of this mutual or co-operative corporation for business getting and maintenance is the most eloquent evidence in the entire record, not only as to what managers think are economical expenditures, but what the shippers and producers themselves authorize.* In the record the Chicago Producers Commission Association is known as firm 100. Its per head non-salary business getting and maintaining expense for 1932 for cattle and calves was 13.37¢, a figure two and one-half times that considered to be reasonable by the secretary (R. Vol. I, p. 164). For hogs, the non-salary per head business getting and maintaining expenses were three times the amount allowed by the secretary as reasonable (R. Vol. I, p. 165); and for sheep, almost four times as much.

Edward J. Lawler, one of the proprietors of Lawler Brothers, testified that under his direction his firm reduced expenses all along the line in 1932 (R. Vol. II, p. 874). He stated:

> "I do not believe that I spent or that my employees spent any more money in the year 1931 or the year

1932 than should have been spent in the exercise of good sound business judgment. * * * The matter of travel and solicitation is carried in a separate account in our books, and it gives considerable detail as to expenses. After the expenditures are incurred, I make a careful examination to determine whether or not in my judgment the expenditures are reasonable. I exercise a very careful supervision over that matter, and from the information I obtain from those inquiries I am able to say that those expenses, in my judgment, were both necessary, and the amount spent was not unreasonable." (R. Vol. I, p. 874-5).

The non-salary business getting and maintaining expenses for 1932 of Mr. Lawler's firm, number 51, substantially exceed the allowances held reasonable by the secretary; indeed in the case of hogs and sheep the secretary's reasonable allowance is almost doubled. (R. Vol. I, p 164-166).

E. G. Fulkerson, president of National Livestock Commission Co., testified:

"I find that our force does not have time to comply with all of the requests that come to us to visit their feed lots. Lots of times we cannot go when we have requests. It is natural for us to attempt to have solicitors not only to see and appraise cattle, but solicit any other cattle that may be in the neighborhood ready to ship. I consider that most of the business that comes to us is account of our service, and our service when we sell their stock, and also in keeping them posted and in keeping in personal contact with them. While our reputation and our service may be of the best, it is necessary to expend a sum of money for soliciting and in keeping them constantly posted as to the markets. We cannot just stop. If you do, your business slips." (R. Vol. II, pp. 768-769).

The same witness, Fulkerson, further stated:

"I think that all of the solicitation that we did and all the trips we made were warranted, and I might also add that I think they were profitable to us when we made them. I have several requests at the office now for me to come to the country to see cattle in different

spots at this time. I have a letter from G. B. Carpenter at Hamburg, Iowa; he and his son feeds about 800 cattle each year and I have a date to go out, he wrote me and asked me to come out on the eleventh of August. Mr. Morgan Bohart at Plattsburgh, Missouri, has also written me to come down there; he feeds about 1,200 and I have other various letters there. I make a trip to each of these places each year and they look forward to it and expect me and I might also add that it never costs me a cent on earth for any automobile hire when I go to those places. They meet me and take me all over the country and are tickled to death to have me come. As to whether I agree with Mr. Marshall of the Wool Growers, the people that I go to see do not feel there is too much solicitation, they always have a good chicken dinner for me and everything and they are glad to have me and always ask me to come back." (R. Vol. II, p. 772).

The non-salary business getting and maintaining expense for the year 1932 of Mr. Fulkerson's firm, number 66, exceeds the allowance of the secretary for each species of livestock (R. Vol. I, pp. 164-166).

Testimony of the kind and to the same effect as that quoted in the paragraphs above could be multiplied indefinitely from the record. *Every owner or manager, testifying on the question of business getting and maintenance, without exception, stated that the expenditures made by them for this function were, in their judgment, as owners or managers, warranted and necessary.*

The Secretary did not consider competition with other markets nor direct selling to Packers.

The Secretary's apparent position is that the business of the appellants is a monopoly and hence that they are entitled only to keep their names before the public. It is an erroneous premise that the appellants have a monopoly. There is keen competition among the appellants themselves as to the services which they render. In addi-

tion, there is competition with other markets and with direct buying.

There are at least six other central markets in the Middle West. The answer of the Secretary admits that in ten years the percentage of cattle and calves handled by Chicago agencies diminished from 42.4 per cent in 1923 of the cattle and calves handled at the seven central markets of the Middle West to 33 per cent in 1932. Making the same comparison for the same period in the case of hogs, the decrease has been from 53.5 per cent to 42.2 per cent; and in the case of shipping, the diminution has been from 39.1 per cent to 29 per cent.

The Secretary failed also to give consideration to the fact that direct shipment of livestock to meat packers without intervention of market agencies is increasing. This presents not only a serious problem to the appellants as to the volume of business handled, but a more serious one to shippers of livestock. Market agencies are the medium through which livestock shippers obtain the highest market prices for their produce. The salesman of a market agency deals with the buyer from the packers at arm's length. So small a difference in price as 5c per hundred pounds makes a difference of $12 to the shipper of a car lot of cattle (R. Vol. II, p. 526).

The answer of the Secretary admits that the direct receipt of hogs by packers has increased from 4.56 per cent of the total number of hogs received at the Chicago yards in 1922 to 34.15 per cent in 1932. During the same period the totally directed consigned sheep receipts more than doubled from 13.52 per cent. For cattle and calves the increase in direct buying is less.

When direct buying has increased to such a proportion that the efforts of the shippers' representatives at the Chicago Yards are no longer effective to keep the direct

buying price from dropping below the amount obtained by a salesman minus the market agency's commission, shippers and producers of livestock will be entirely at the mercy of the packers in respect to prices, because there will then be no effective competition. Business getting and maintenance is essential, not only to the survival of the appellants but also to the beneficial interest of livestock producers and shippers. So when the Secretary says that the appellants are entitled only to keep their names before the public, because their business is monopolistic, and hence that solicitation expense should be curtailed, he is penny-wise and pound-foolish. The country trips not only are personal contact, but are of immediate value to the shippers as regards appraisals, the condition of the market, the sorting of livestock and the like; but this solicitation as well as the other media of business getting and maintenance are of more far-reaching importance in maintaining at the primary live stock market of the world adequate representation for the shippers.

The amount allowed by the Secretary for business getting and maintenance has no relationship to actual cost.

In a foregoing section of this Brief on business getting and maintenance, we have demonstrated that the amount allowed as reasonable by the Secretary for this expense has no relationship to the actual experience of the market. Three times in Paragraph 142 of his findings (R. Vol. I, p. 162), the Secretary states that the appellants are entitled only to keep their names before the public. This statement proceeds upon the false premise that the business of the appellants is a monopoly. There are at least three elements of competition: other commission firms, six other central markets in the Middle West, and direct buying. But more important still is the service to the shippers by the country trips, many of which, the Secre-

tary says, are requested by the shippers. On these country trips, not only is business solicited but customers are advised in regard to feeding and the time of marketing their livestock and their livestock is appraised (Par. 82, Secretary's Findings, R. Vol. I, p. 120). Also on the country trips to feed lots where sheep are rested and fed before being sent to market, commission firms see that the sheep are receiving proper attention and if requested to do so, make arrangements for having the sheep sheared and look after the selling of the wool without extra charge. (Secretary's Findings, Par. 83, R. Vol. I, pp. 120-121).

If the applicants are to be allowed to expend only sums necessary to keep their names before the public, that could be accomplished by general advertising and country trips would be prohibited, and all service to the customers incident to such trips. These services are such that customers volunteer to pay for them (R. Vol. II, p. 525); that customers make more requests for such trips than can be taken care of (R. Vol. II, p. 768); and that in the case of the firm handling the largest volume of business on the market, Chicago Producers Commission Association, the co-operative owners themselves incur much greater expense than the Secretary would allow (See Firm 100, R. Vol. I, pp. 164-166).

It is submitted that the Secretary's allowance for non-salary business getting and maintaining expenses is arbitrary and unreasonable, without relationship to the experience of the market, without foundation in the evidence, and the substitution of a personal judgment for that of the prudent management of the businesses.

Most significant is the testimony of the government's accountant, Bachman, who, testifying as to business getting and maintaining expenses, said:

> "We made no investigation to determine whether the amount so spent was proper or improper." (R. Vol. II, p. 702).

Nothing can make it more clear that the secretary's allowance of a figure which he thought was reasonable for business getting and maintenance was the imposition of his personal judgment, without any evidence in the record to support it.

Under the law no administrative officer can substitute his judgment for that of business managers.

In *West Ohio Gas Co.* v. *Public Utilities Comm.*, 294 U. S. 63, 72, the Court said in respect to expenses to procure new business:

> "The commission did not question the fact of payment, but cut down the allowance to $5,000 a year on the ground that anything more was unnecessary and wasteful. The criticism has no basis in evidence, either direct or circumstantial. Good faith is to be presumed on the part of the managers of a business. * * * In the absence of a showing of inefficiency or improvidence, the court will not substitute its judgment for theirs as to the measure of a prudent outlay."

There is not a single line of testimony in the record that any expenditures made were extravagant or wasteful. The government's chief witness, Bachman, admitted that no investigation was made to determine whether the amounts spent were proper or improper (R. Vol. I, p. 702).

The evidence shows that business getting and maintenance is not only for the benefit of the commission firms, but for the benefit of the shippers themselves. The shippers desire it, even to the extent of offering to pay Walters & Dunbar for their expenses (R. Vol. II, p. 525); and even to the extent of paying for it out of a diminution of profits in the case of the co-operatively-owned Chicago Producers Commission Association.

The Secretary's method for determining the proper allowance for owners' salaries was unreasonable, was based upon an erroneous rule and is without foundation in the record.

The Secretary unreasonably considered reimbursement to cover management and to cover uninsurable risks to be profit.

In Paragraph 158 of the Secretary's order (R. Vol. I, p. 180), there appears the unit costs for each item or function of service of the market agencies.

To the total costs given in Paragraph 158, the Secretary adds profit, consisting of two items (1) to cover management; (2) to cover uninsurable risks.

The items to cover management and to cover uninsurable risks are erroneously considered as profits. The allowance for management is determined primarily from the experience of hired managers. To evaluate the services of owners solely on the basis of a hired manager puts the owner-manager on the same basis as a cooperative undertaking in which the risks are carried by the members of the concern rather than by the manager. It removes the primary incentive to ownership; namely, the prospect of pure profits or something above a manager's wages.

The error in considering a return for uninsurable risks as profits was demonstrated by the recent fire catastrophe at the Stock Yards (R. Vol. I, pp. 213-214), during which all of the records of the petitioners except those kept in fireproof safes, were destroyed. Among the items destroyed were customers' lists, the only portion of these being preserved were those names included in the impounding records filed with the Clerk of the District Court.

The economic motive of the work done in the commission business is the desire to make a profit. It is a well recog-

nized principle that if the entrepreneur himself acts to some extent as a salesman or a worker, and puts capital in the business, he may allow a certain sum based on prevailing prices, as payment for cooperation of these factors of production. It is only the remainder that represents the pure profit of enterprise.

This profit of enterprise is, at first sight, akin to a pure differential profit that is made merely as a result of the difference in cost in different undertakings. It includes, however, other elements which have an approximately definite price and which must, therefore, be regularly taken into account in the calculations on which a business is based. These prices must, therefore, be put on the same footing as costs, and must normally be covered by the price of the service.

To this class belongs, first of all, the personal work of the entrepreneur in his capacity of employer, in organizing and directing the undertaking. Work of this kind must clearly be reckoned among the costs of the undertaking. There is a price for these functions of enterprise in every economically advanced country. The relative scarcity of competent individuals in proportion to the demand for them is the primary determining factor of the price of the entrepreneur's work. The price of the entrepreneur's work must be included among the costs of the business and not treated as profit as was done by the Secretary in his findings (R. Vol. I, pp. 178, 179, 180). Thus, if an owner making an annual profit of $10,000 in his business can earn $7,500 as a manager or a salesman for another firm, his annual profit should be reckoned only as $2,500. If the net proceeds are only $5,000, it should be taken and accepted that he is really working at a loss, since his managerial or salesman ability is worth $7,500.

The whole organization of the business, the training and efficiency of the employees in their work, the interest of all

in the prosperity of the business, tend to consolidate the position of the firm. In many cases in this business the position is the fruit of a half century of endeavor, and the pure profit of enterprise now attempted is in part the outcome of the position which has been won. It can, however, be lost easily in the continual changes of the peculiar economics now current, which forces in even normal times are always at work to displace old and favorite firms and give place to new ones. Its maintenance necessitates a ceaseless effort—an unrelaxing vigilance,—in a word, exertions should be paid for, and the price must be included in the cost, and under no circumstances should these elements be regarded and set up as profits as was done by the Secretary in Section 158 (R. Vol. I, p. 180).

The record is clear that a well organized live stock commission business must in the very nature of things have a quite inflexible annual cost to the owner. The undisputed facts are that the owners in this business must employ their skilled talent on an annual basis which represents the greatest portion of their outlay. They must accept the hazards of the vicissitudes of the weather conditions, such as crop failures due to insufficient moisture, controlled production, blizzards, destruction of facilities in which they conduct their business by fire or storm, the whim or caprice of their patrons, bank failures, live stock epidemics, embargoes, tariff barriers, direct marketing to packers, control of live stock and feed production, labor troubles and any other hazard or factor which may cause sudden, temporary, prolonged or permanent decrease in business or increase in costs.

Cassel in his "The Theory of Social Economy" (1932) states:

> "A second element of the profit of the entrepreneur, in the broad sense of the word indicated above, which must be reckoned as a *cost*, is the risk—insofar as it

can be calculated with some degree of probability and so included in the estimate of cost." (p. 174)

"The same is also obviously true of the risk arising out of an unavoidable falling-off in sales. * * *" (p. 174)

II.

THE SECRETARY, IN PRESCRIBING REASONABLE COSTS, FOLLOWED NO WELL-KNOWN OR WELL-RECOGNIZED EXPERIENCE METHOD, PARTICULARLY IN RELATION TO THE PERFORMANCE AND SALARIES OF SALESMEN.

The secretary purports to follow methods of fixing reasonable costs employed in the Omaha Case, *Tagg Bros. & Moorhead v. United States* (280 U. S. 420). In paragraph 103 of the Secretary's Findings (R. Vol. I, p. 128) it is stated that that case decided that rates charged by market agencies should produce gross revenues sufficient to pay all reasonable costs and a reasonable compensation for management and risk. It is then announced that that statement is adopted as a guide in the present proceedings,

> "and it becomes necessary, therefore, to determine the reasonable costs to the respondents of handling each species of livestock." (R. Vol. I, p. 128.)

The determination of reasonable costs should have some relationship to experience regardless of the method employed to determine what the reasonable costs are. Particularly in respect to salesmanship, the salary of salesmen, the secretary's costs bear no relation to experience. Therein the *Tagg case* is no comfort or precedent for the secretary. In the *Tagg case* the secretary indicated that five thousand dollars a year was a reasonable salary for cattle salesmen when the evidence showed that only four out of thirty-nine such salesmen were paid that much per year (29 F. (2d) 755, Government's brief, *Tagg case*, p. 31). In the instant case, however, the situation is reversed.

Translating salesmen's salaries to a per head basis, the Secretary allows $.1667 for cattle and calves. The average cost on the Chicago market is $.4024. In other words, the finding of the Secretary as to what is a reasonable salary per salesman bore an actual relationship to the experience at the Omaha yards. Indeed it was higher than the average, for only four out of thirty-nine cattle salesmen received the amount allowed by the secretary as reasonable, and 16 received less than $3,000 (Government brief, *Tagg case*, p. 31).

If the method employed in the *Tagg case* had been utilized in the instant case, salesmanship salaries per head for cattle and calves certainly would have been at least the average of the market; viz., $.4024 instead of less than half that average amount of $.1667. *It is apparent, therefore, that in the Tagg case the Secretary endeavored to set the reasonable cost of the salesmanship function for cattle and calves at a figure for which the owners could employ salesmen; but that in the instant case, on the contrary, he used only his personal judgment as to what he believed a cattle salesman should receive, paying no attention to what the evidence shows the market agencies had to pay.*

We think it well, before pursuing the discussion of the findings made by the secretary in respect to costs, to review a few of the many cases in support of the rule announced in the Propositions of Law, that a rate-making body is not the financial manager of a business and is not empowered to substitute its judgment for that of the management of the business. The applicable general rule is well expressed in *State Public Utilities Commission* v. *Springfield Gas & Electric Co.* [291 Ill. 209, 234; 125 N. E. 891]:

> "The commission is not the financial manager of the corporation and it is not empowered to substitute

its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers."

See also *West Ohio Gas Co.* v. *Public Utilities Comm.*, 294 U. S. 63, 72, quoted herein at page 75.

In the *Tagg case* the secretary did not ignore the amount paid to salesmen; in the instant case, he did. Nor is there any evidence in the record of any abuse of discretion or of any wastefulness in salaries paid salesmen. A salesman and his employer bargain at arms length. The secretary has no power to tell a market agency what it can or must pay a cattle salesman; and obviously the secretary has no control over what salesmen demand. The statute gives the secretary only regulative power over the market agencies; it gives the secretary no control over salesmen. An employer or a purchaser who must bargain at arms length gets in service or in value only what he pays for; and in this respect the livestock commission business is no different from any other.

In *Denver Union Stock Yard Co.* v. *United States* (57 F. (2) 735), before a Statutory Court consisting of Circuit Judge McDermott and District Judges Kennedy and Symes, in writing the opinion of the Court, Judge McDermott said:

> "The rule undoubtedly is and must be that the power to regulate rates does not confer upon the Secretary the power of management of the affairs of the corporation." (p. 747)

And again:

> "There is no rule of law that denies to the directors of a stockyards company or of a telephone company the right to use ordinary business judgment in the conduct of the affairs of the corporation." (p. 747)

After citing and considering many cases, the Court concluded:

> "These cases do no more than to apply the rule

> long settled that the power to regulate rates does not confer the power to manage." (p. 748)

If it was regulation in the *Tagg case* for the secretary to say that five thousand dollars a year was a reasonable salary for cattle salesmen when only four out of thirty-nine such salesmen were paid that much, it was not regulation, but management and dictation, for the Secretary to say that on the Chicago market a cattle salesman's salary should be $4,500 when such salesmen receive on the average $1,108.08 more than the salary considered reasonable by the Secretary.

The universally applied rule that an administrative body or officer can regulate, but cannot manage, applies to salaries as well as to other expenses. In *New York & Richmond Gas Co.* v. *Prendergast* (10 F. (2d) 167) it was contended on behalf of the defendant that the salary paid to the comptroller of the gas company was not justifiable. The Court said, page 181, that in the absence of evidence to the effect that the company did not conduct its affairs with proper discretion and sound business judgment, it would be assumed that the business was conducted as the ordinary prudent business-man would conduct his own affairs. In the present case no charge of bad faith, mismanagement, or the exercise of imprudence is made.

In *Havre de Grace Bridge Co.* v. *Towers* (103 Atl. 319) an Order of a Commission was reversed by the Maryland Court of Appeals for the reason, among others, that:

> "the Public Service Commission by its Order undertook by indirection to direct the financial management of the company." (p. 490)

The discussion as to management and operating expenses related to salaries of officers.

In *Banton* v. *Belt Line Ry. Corp.* (268 U. S. 413, 421) the Court said:

> "Broad as is its power to regulate, the state does

not enjoy the freedom of an owner. Appellee's property is held in private ownership; and, subject to reasonable regulation in the public interest, the management and right to control the business policy of the company belong to its owners."

Many more cases than those quoted from above are referred to on point five of Propositions of Law. Yet in view of this unanimous line of authorities, the secretary of agriculture states in paragraph 117 of his Findings (R. Vol. I, p. 138):

"the method here pursued is to determine a normal cost by the exercise of judgment upon all the facts of the record * * *"

The appellants have always understood that the word "normal" means average or ordinary or usual, but the secretary's definition of the word "normal" is what he thinks the costs should be regardless of whether the costs are or can be that amount. We propose now to show that the exercise of the secretary's judgment was arbitrary and unreasonable and that his judgment was exercised without the use or consideration of any well-known or well-recognized method of determining costs. Rather he sought to impose his personal fiat for that of the prudent business management of the appellants.

No brief is held out by the appellants for any particular experience method of determining what normal costs are; but the appellants do contend that well-known and widely used methods in economic studies would have brought entirely different results from those arrived at by the Secretary.

As we have observed, the Secretary purports to follow methods of fixing reasonable costs employed in the *Tagg case*. That is, the Secretary adopted a general classification of costs which is set forth in paragraph 158 of his Order (R. Vol. I, p. 180). This classification includes salesmanship, yarding salaries, yarding expenses, office

salaries, office expenses, business getting and maintaining, administrative and general expenses, insurance, and interest on necessary capital. In the District Court the brief of the Secretary stated:

> "The secretary analyzed the costs of each firm with respect to the different functions, and delegated those costs to the different species. Then, after the firms whose experience was abnormal had been identified by the exercise of judgment based on the study of all the data in the Record and their experience given appropriate consideration, the secretary determined a figure for each function around which the costs tended to cluster."

Unless the costs found by the Secretary bear a relationship to experience and actualities at the market, by whatever method determined, how could the Secretary possibly identify "the firms whose experience was abnormal"? And how can the Secretary and his counsel urge that the Secretary "determined a figure for each function around which the costs tended to cluster" when the experience at the market was completely ignored?

The Secretary stated in paragraph 117 of his Findings (R. Vol. I, p. 138) that his method was to determine a normal cost. The expression "a normal cost" can have no meaning short of some method of arriving statistically at experience and actualities. This the Secretary rejects. The Secretary had no right or occasion to mark down each and every item of cost and expense below actual experience. In paragraph 168 of the Secretary's Findings (R. Vol. I, p. 185), he said:

> "Upon the basis of the reasonable costs hereinbefore determined and upon a consideration of the entire record, it is found that respondents' schedules of rates and charges now under investigation contain rates and charges which are unreasonable and unjustly discriminatory."

The Secretary was compelled, as he admits in the language

quoted, to substitute himself as a dictator of costs, and to lower actual costs, before he could determine that the rates charged were unreasonable.

The Secretary states that the employment of statistical methods in arriving at costs are objectionable (Findings Par. 118, R. 138). The methods to which he refers are: first, the median, which is the unit cost for that firm above which there are as many firms with higher costs as there are below, with lower costs; second, the bulk line method, whereby a certain percentage of firms having extremely high costs would be eliminated from consideration; and third, the weighted average method which makes an average unit cost for the market, weighted by volume of business done. The Secretary's objection to either of these methods is that judgment must be exercised in the choice of the method employed. That statement is obviously true but after a choice has been made, the market experience is reflected in the calculations made. Under the Secretary's method it is all a matter of guess. And whatever method is adopted, the result will bear a relationship to an actual and not a hypothetical normal. For instance, if a bulk line method were adopted, it could easily be shown what percentage of the firms had attained any unit cost in question. Again, with a weighted average taken as a basis, the influence of all firms would be represented in the average. With all of the methods, namely, bulk line, weighted average and median, a standard of costs would be selected that a large proportion of the firms could attain.

The Secretary, however, insists upon "the exercise of judgment." When he does not even purport to have found costs bearing a relationship to normal experience, it is evident that "the exercise of judgment" results only in the Secretary's conclusion as to what he thinks costs ought to be and not what costs are. This is illustrated particularly in respect to the salary allowance for salesmanship.

In paragraph 134 of his Findings (R. Vol. I, p. 149), the Secretary says:

> "The salaries of the employed salesmen are the result of bargaining and afford a fair test of what salesmanship can be purchased for in the open market."

This recognition by the Secretary that the fair test of what salesmen can be purchased for is a result of bargaining in the open market, is entirely inconsistent with the Secretary's finding that $4500 is a reasonable price to be paid to a cattle salesman since $4500 is $1108 less than the average paid for such salesmen. If the fair test is the purchase price on the open market, as the Secretary states, a figure far below the average of the market does not comply with this fair test.

The fair test purchase price in the open market, was utilized in the *Tagg* case where the salary of cattle salesmen found to be reasonable was $5,000 and where only 4 of the 39 salesmen received that amount or more. What the Secretary says is a fair test at any market was not applied in the findings in respect to the Chicago market. The finding of $4500 is not what the market agencies must pay in the open market but what the Secretary thinks they should have to pay. The Secretary would regulate not only the owner but the wage earner as well.

The Secretary's findings in this respect bring his method precisely within the condemnation of this Court in *West Ohio Gas Company* v. *Public Utilities Commission of Ohio*, 294 U. S. 79, 82, in which the Court said:

> "There are times, to be sure, when resort to prophecy becomes inevitable in default of methods more precise. At such times, 'an honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances', is the only organon at hand, and hence the only one to be employed in order to make the hearing fair. But prophecy, however honest, is generally a poor substitute for experience."

The experience is what the market agencies have to pay upon the open market for salesmen. If the Secretary has power to say what a market agency may agree to pay in bargaining with a salesman, in other words, to fix salaries without regard to experience, there will henceforth be no difficulty for the Secretary at any time to say that any set of rates is unreasonable by the mere expedient of saying that salaries which must be paid as a result of bargaining are "by the exercise of judgment" too high; and the answer in any rate investigation case can be determined in advance of a hearing.

The lack of relationship between the Secretary's reasonable cost and the market experience is shown by Petitioners (appellants) Exhibit 11 (R. Vol. I, p. 296). All of the facts and figures appearing upon this Exhibit were in evidence before the Secretary, except the reasonable costs per head found by the Secretary. In this exhibit for each species of livestock and for each manner of delivery, namely straight cars of single or plural ownership, mixed cars of single or plural ownership, and drive-ins, the Secretary's reasonable cost is compared with the market median, with the weighted average and with the $66\frac{2}{3}$ per cent bulk line. The figures are for the year 1932. The figures in the first column entitled "Secretary's Reasonable Cost per car" is the result of taking the average number of head per car for each class of business and multiplying it by the Secretary's reasonable cost per head. For instance, in the case of straight cars, single ownership, of cattle and calves, there was an average of 25.56 head per car. This, when multiplied by the Secretary's cost per head for cattle and calves, $.4297, produces a cost per car of $11.41 shown in the first column of Exhibit 11 under "Cattle and Calves" opposite "Straight Cars Single Ownership" (R. Vol. I, p. 250).

With respect to each other class of business under each of the three species such as straight cars plural ownership,

the rate was applied to the average number of head per car of that class of business. And so likewise with a mixed car, single ownership, mixed car plural ownership, and drive-ins (R. Vol. I, p. 251).

The remaining columns in Exhibit 11 are self-explanatory. They are the petitioners' median, weighted average and 66⅔ per cent bulk line cost per car. The two right-hand columns on the exhibit show respectively the number of firms below the Secretary's cost per car, and the aggregate number of cars handled by such firms.

Without reciting all of the figures in that exhibit, attention is called to the fact as illustrative that the Secretary's reasonable costs for the handling of a straight car, single ownership, cattle and calves is only half of the median cost, half of the bulk line cost and only a trifle more than half of the weighted average. Only 3 firms out of 95, during 1932, handled such a class of business at costs below the Secretary's; and these firms handled less than 3/10 of 1% of that class of business at the market.

To take an example from the handling of hogs: The Secretary's reasonable cost per straight car single ownership is $11.99; the median is $17.64; the weighted average is $17.57; the bulk line $18.91. And in this class of business 8 out of 95 firms were below the Secretary's cost. These firms handled 500 out of the 14,400 cars of that class.

The figures given as petitioners' unit costs on Exhibit 11 will be attacked by the Government on the ground that these costs include adjustments for salary appraisals to cover the situations where there was no profit nor salary shown on the books for an owner or where the amount shown was inadequate in the judgment of an appraisal committee of five members having intimate knowledge of the business of the market. This salary appraisal adjustment increased the petitioners' unit costs 11%. The inclusion of

this 11% over what the Government found to be actual unit costs would make no material difference in the result shown on Exhibit 11. Even with salary appraisal adjustment included, the Secretary's reasonable cost per car would be less for each species and for each mode of arrival than the median weighted average or bulk line costs. For instance, in the case of straight cars, single ownership, cattle and calves, the Secretary's reasonable cost per car of $11.41 would compare with a median cost of $20.33, a weighted average of $18.48 and a bulk line of $19.80. The actual unit costs found by the Government as a result of its audits are subject to a criticism similar to that, but in reverse, leveled at salary appraisal adjustments. The Government accountant, Bachman, testified:

> "Where no owners' compensation was shown on the books, we put in the amount of profit in lieu of salary or drawing account. Where no profit nor salary was shown for an owner, there was not included any compensation for that owner, although on the questionnaires the owners were shown as rendering service. As I stated before, we in no way attempt to set out what the fair compensation of an owner should be, and I appreciate fully that with respect to the owner's income, this study may be incomplete insofar as there may be individuals who have no salary or profit assigned to them as compensation for whatever service they may have rendered" (R. Vol. II, p. 648).

The lack of relationship between the Secretary's reasonable cost per car found by computing his reasonable cost per head by the average number of head in each mode of arrival, is shown in a comparison of the Secretary's reasonable cost per car with the actual cost per car found by the Government accountants. In the following table, figures in the first column are taken from Petitioners' Exhibit 11 (R. Vol. I, p. 296) and the figures in the second column are taken from Sheet 17 of Respondent's Exhibit 12, before the Secretary (here filed as a physical exhibit).

Class of Business	Secretary's "Reasonable" Cost per car.	Government's Actual Cost per car.
Cattle & Calves		
Straight cars—single ownership	11.41	15.23
" " —plural "	13.14	26.68
Mixed " —single "	17.64	24.44
" " —plural "	18.86	41.54
Drive-Ins	12.42	29.62
Hogs		
Straight cars—single ownership	11.99	14.43
" " —plural "	11.33	19.74
Mixed " —single "	12.42	17.85
" " —plural "	11.83	24.37
Drive-Ins	11.07	24.00
Sheep		
Straight cars—single ownership	11.15	13.55
" " —plural "	10.25	20.98
Mixed " —single "	9.25	23.68
" " —plural "	9.21	29.37
Drive-Ins	9.54	36.05

Petitioners' Exhibit 11 (R. Vol. I, p. 296) reveals other astounding facts. The entire record shows, and it has so far been conceded by Government counsel, that it costs more to handle drive-ins than other classes of business; that it costs more to handle mixed cars than straight cars; that it costs more to handle plural ownership consignments than single ownership consignments. The Secretary's actual cost reduced to a carlot basis in the foregoing table, shows the same conclusion. However, the Secretary's reasonable costs indicate reverse situations. His reasonable cost for handling drive-in cattle and calves is $12.42 as compared with $18.86 for mixed cars plural ownership. His reasonable costs for handling drive-in hogs is $11.07 as compared with $11.99 for straight car single ownership. His reasonable cost for handling mixed cars plural ownership of hogs is $11.82 as compared with $12.42 for mixed cars single ownership. Similar observations are shown on Exhibit 11 and in the table above in respect to sheep.

One fact which shows, perhaps more clearly and concisely than any other, that the Secretary's reasonable costs have no relationship to the normal market experience is that

while the Government's cost figures show that expense of handling livestock increases with mixed arrivals of livestock with a plurality of owners in a shipment and with drive-ins, *yet the Secretary in finding per head reasonable costs, finds the same amount as reasonable per unit cost regardless of the number of head in a shipment, the mode of arrival, or the number of owners.*

When more expensive modes of arrival predominate, the costs are accordingly increased and over this factor the market agencies have no control. Where a consignment can be sold as a single unit it is cheaper to handle than when it must be sorted and sold in multiple units. The necessity for the breaking up of consignments is beyond the control of the commission men and increases their costs in spite of the utmost efficiency. Therefore, it will be realized that when unit costs have been reduced to their ultimate refinement, they do not of themselves indicate whether efficiency or inefficiency exists.

The appellants are entitled to some information as to the method employed by the Secretary in arriving at his so-called reasonable costs other than by the statement that it was by "the exercise of judgment". Neither the Secretary in his findings, nor Government's counsel, have up to this time accepted the challenge to state what items of cost and what expenditures are considered abnormal and unreasonable, and by what method such items were selected as being unreasonable. The only way that reasonable costs which deviate so far from experience and from the normal can be justified, is by a showing that there is included in such costs wasteful or extravagant or unnecessary expenditure. The only answer is "the exercise of judgment".

In the foregoing discussion of the absence of a relationship of costs allowed as reasonable to the normal market experience, reference has been made particularly to the salaries of cattle salesmen. The same lack of relationship ob-

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In the foregoing discussion of the absence of a relationship of costs allowed as reasonable to the normal market experience, reference has been made particularly to the salaries of cattle salesmen. The same lack of relationship ob-

tains also in respect to hog and sheep salesmen. The Secretary would allow to a hog salesman who sold three times as many hogs as the market average, a salary of $3600 or $588.93 less than the amount actually paid, namely, $4,183.93. In the case of sheep, the salary deemed reasonable by the Secretary is $4,000 per year, while the average salary paid was $4,451.13.*

In the Omaha case $5,000 was allowed for sheep salesmen employees. Of the nine at the Omaha market only 3 received salaries of $5,000 or more, and 4 received less than $4,000 a year. In the Omaha case $4,000 was allowed for hog salesmen. Of the 25 employee hog salesmen only 5 received salaries of more than $4,000; and 15 received less than $3,000 per year. (Gov't brief, *Tagg case*, p. 31.)

These salary allowances were characterized by counsel for Secretary in the *Tagg case* to

> "represent approximately the maximum market value of salesmanship." (Brief, p. 31.)

Yarding and office expense allowed by the Secretary, while below costs actually incurred, bears a relationship to actual cost. The departure from experience and evidence by the Secretary in respect to salary of salesmen was arbitrary and unreasonable.

The District Court in the Omaha order in the *Tagg* case, 29 F. (2) 755, said:

> "The Secretary found a maximum for the other items of costs of carrying on the market agencies in substantially the same way that he arrived at the salesman cost."

In the Omaha case, the allowance for a cattle salesman was $5,000, only 4 salesmen out of 39 on that market re-

* The figures in this paragraph are for the year 1932 and are taken from Respondents' Exhibit 12 before the Secretary, the Secretary's Order of January 8, 1934 (R. Vol. I, p. 62) and from Petitioners' (Appellants') Exhibit 9 (R. Vol. I, p. 291-294).

ceiving that amount or more. The District Court in the *Tagg* case said that for other items of cost, the Secretary found a maximum in substantially the same way. This the Secretary did not do in the Chicago or instant case. As to every item of cost in the Secretary's analysis of costs, *except the salary of salesmen*, the Secretary in his findings listed from highest to lowest the amount of actual costs of the firms. Why salary costs for salesmen were treated in a different fashion does not appear. An inspection of the amounts allowed per head for yarding salaries, yarding expense, office salaries, etc., will show that the per head amounts deemed reasonable by the Secretary for these cost factors does bear a relationship to experience. In making this statement the appellants do not admit that the per head allowances for yarding salaries, yarding expenses, office salaries and the like are adequate. The point is that for every item of expense except salesmen's salaries, the Secretary endeavored to find a figure bearing some relationship to the normal. The burden is upon the Secretary to show why a different method was followed in respect to the salary of salesmen.

To amplify the method followed by the Secretary in respect, for instance, to yarding salaries, yarding expenses and office salaries, we discuss briefly those factors of expense and the amount allowed as reasonable by the Secretary. In respect to yarding salaries, the amount found reasonable per head as to cattle and calves is $.0725 (R. Vol. I, p. 153). On pages 150 and 151 of the record the yarding salaries per head for cattle and calves paid by each firm are listed from the lowest to the highest. There are 32 firms below the allowance of $.0725 and 68 firms above that amount; while the median is $.0798, or $.0073 more than the amount deemed reasonable.

Yarding salaries per head of hogs show a similar situation. Reference to pages 151 and 152 of the record (Vol. I) show that there are 35 firms whose costs were below the al-

lowance of $.0280; and 64 firms above. The median is $.0035 more than the allowance, or $.0315.

Per head yarding salaries for sheep tell a similar story. There are 29 firms below the Secretary's allowance of $.0085 per head, and 64 firms above. The median is $.0110, or $.0025, above the allowed amount (R. Vol. I, pp. 152-3).

Turning now to yarding expenses other than salary, the Secretary allowed as a per head cost for cattle and calves $.0075. 27 firms are below this amount and 28 above. The allowance is for all practical purposes the median. In the case of hogs, 16 firms are below the Secretary's allowance of $.0004 per head, and 16 firms above. The amount deemed reasonable is the median. Yarding expenses other than salary for sheep salesmen tell a similar story with 7 firms below the amount allowed as reasonable by the Secretary, and 9 firms above. (All figures discussed in this paragraph are found in Volume I, pp. 153-4.)

A sentence or two in respect to office salaries. The per head reasonable amount for cattle and calves is $.0750. 36 firms are below this amount and 65 above. The median is $.0839. The difference between the allowed figure and the median figure is $.0089. In respect to office salaries per head of hogs, the Secretary's allowance is $.0250. 35 firms are below this amount and 64 above. The median is $.0027 more than the amount deemed reasonable. A similar situation prevails in respect to the office salary allowances per head for sheep. (All references in this paragraph are to Vol. I, pp. 154-7).

From the above paragraphs the Secretary's own findings themselves show that one method was followed in the determination of an allowance for salaries of salesmen and a different method followed in respect to the alleged reasonable allowances for other factors of cost in conducting the livestock commission business. It is apparent, likewise, that

the Secretary departed from the teachings of the *Tagg* case upon which he relies, for in that case the same method was followed in arriving at salesman cost as was employed in finding a maximum for the other items of cost. The departure from experience and evidence by the Secretary in respect to the cost of salesmen was arbitrary and unreasonable.

The theories of the Secretary as to performance of salesmen and salary allowance cannot meet the test of economists of measurement by actualities.

The cost studies used in the hearings before the Secretary were examined by Doctor Harry H. O'Neill, head of the Department of Economics at St. Louis University (R. Vol. II, p. 1116). His studies included the preparation of respondents (appellants) Exhibit 22 (Physical Exhibit), which is a correlation study, the purpose of which was to determine what degree of association existed between volume of business and costs of doing business.

He stated (p. 1120):

> "The study indicates little or no degree of association between the figures for volume and costs as supplied to me. It is the method that is most generally used. In fact, it is in very general use. Where I have referred to costs, I have reference to unit costs. We have included all firms on the market and the number of items are sufficiently numerous to give accurate results. This case is not a question of sampling at all. We have used all the firms on the market."

Dr. O'Neill also prepared respondents' or appellants' Exhibit 23, a physical exhibit showing a bulk line, median and weighted average analysis of the cost of selling. All volumes of all firms were considered separately and in the aggregate. The Secretary found the reasonable per head cost for cattle and calves to be $.4297. Dr. O'Neill testified (R. Vol. II, pp. 1120 and 1121) that it cost $16.92 per car to

handle the cheapest 10 per cent of straight car single ownership cattle and calves, or 58c per head and that 50 per cent of the lowest cost volume indicated a bulk line cost of $19.92 or 68c per head. Dr. O'Neill's testimony as to costs applicable to other modes of arrival and other species demonstrates the same result, namely, that the Secretary's reasonable per head costs bear no relationship to the normal actual experiece of the market.

The viewpoint of the economist is expressed by Dr. O'Neill in these words:

> "In any piece of scientific work, we always subject our hypothesis, or theory, to the test of what has actually happened, or what has actually been accomplished; and so necessarily any standard that deviates by a wide margin from what has actually occurred must be wrong." (R. Vol. I, p. 1132.)

Measured by such a test, the Secretary's allowances for reasonable cost fail.

The method by which reasonable costs are ascertained in the rate hearings are unimportant in and of themselves; and the appellants hold no brief for any particular method. The point is that some method should have been used either to determine reasonable costs or to test such a determination with actualities.

III.

THE DENIALS OF THE PETITIONS FOR REHEARING WERE ARBITRARY.

The Secretary's Order was issued January 28, 1934 (R. Vol. I, p. 62). Before its effective date and on February 7, 1934, a petition for rehearing was filed. This petition alleged, among other things, that the schedule of rates and charges prescribed in the Secretary's Order would cause reductions in revenue which would make it impossible for the appellants to pay necessary operating expenses; that

there had been increases in expenses resulting from the operation of the National Recovery Act and Agricultural Adjustment Act; that during 1933, substantially all of the appellants operated at a loss; that direct sales of livestock to packers were increasing; that the rates prescribed by the Secretary would necessitate throwing out of employment a large number of people; and that the conditions which prevailed during 1933 constituted a greater change than had occurred during any twelve months period prior thereto (R. Vol. I, p. 190).

This petition for rehearing was denied on March 12, 1934 (R. Vol. I, p. 189-191). Before the effective date of the Order of March 12, 1934 and on April 9th, the appellants filed a second or amended petition for rehearing (R. Vol. I, p. 10). This petition for rehearing was denied April 12, 1934.

A second petition for rehearing alleged that the rates and charges prescribed by the Secretary would create a net reduction of 25 per cent in gross income; that the rates prescribed were confiscatory and would not produce income sufficient to pay necessary and usual costs of doing business; that the rates prescribed were based on findings for the years 1931 and 1932 while during the years 1933 and 1934 decided and profound economic changes had occurred adversely affecting the market agencies at Chicago; and that legislation of Congress and the activities of administrative agents of the Government had brought about drastic reduction in the production and marketing of livestock, particularly hogs (R. Vol. I, p. 10).

The denials of the petition for rehearing were arbitrary. The appellants were precluded from showing that the prescribed rates would be confiscatory and prevented from showing, so far as it was then possible to show, that there would be drastic reduction in the production and marketing of livestock, a fact which is now of universal knowledge.

The Secretary refused the hearings and now contends, as we shall hereafter show, that the appellants were not entitled to make such showing before the Court.

On the issue of confiscation, there is devoted a separate section of this Brief. It is here argued that the Secretary should have allowed the petitions for rehearing because of the representations made in respect to changing economic conditions and reductions in the production and marketing of livestock.

Tagg Bros. and Moorhead v. *United States,* 280 U. S. 420, 444, was the authority of the appellants in applying for a rehearing. The opinion in that case states:

> "Where it is believed that the Secretary erred in his findings because important evidence was not brought to his attention, the appropriate remedy is to apply for a rehearing before him or to institute new proceedings. He has the power and the duty to modify his order, if new evidence warrants the change".

In *Atchison, Topeka & Santa Fe* v. *United States,* 284 U. S. 248, the court held it was reversible error to deny a petition for rehearing alleging economic changes since the closing of the record, which changes had a substantial effect on revenue under the rate order.

The evidence which the appellants sought to offer was not evidence which the appellants could have offered on the original hearing. Before the Order of the Secretary was entered, the appellants had no means of knowing whether or not the rates prescribed would be confiscatory. They might have been entirely satisfactory. It would have been entirely impossible to show what effect newly prescribed rates would have until after January 8, 1934, when the rates first became known. In respect to the reduction in livestock marketed, that factor was just beginning to make its influence felt. The *Tagg* case says that the Secretary not only has the power, but the duty to modify the order if

new evidence warrants the charge. The Secretary could not take the first step in the performance of this duty without a consideration of the new evidence. This he refused to hear. That the appellants were correct in the allegations for the petitions for rehearing that drastic reductions in the marketing of livestock, particularly hogs, would occur, and in the allegations that direct sales to packers were increasing, and in the allegation of increased expenses, is now of universal knowledge. We refer to the publications of the Department of Agriculture.

By January 15, 1934, one week after the entry of the Secretary's Order, 6,410,866 pigs, sows and inedible little pigs had been killed as a result of the emergency hog marketing program. (Senate Document 140, 73rd Congress, Second Session, Emergency Hog Marketing Program, a letter from the Secretary of Agriculture, p. 40, Petitioners' Exhibit No. 12 before the Court). The same reference, page 42, states:

> "the sale of each sow * * * removed from fall farrowings approximately five pigs which, under normal circumstances, are fed to an average market weight of about 225 pounds".

It is further stated that the reduction up to January 15, 1934, as a result of the program was in the neighborhood of 1,000,000,000 to 1,200,000,000 pounds.

Miscellaneous Publication No. 235 of the United States Department of Agriculture, November, 1935, entitled "The Agricultural Outlook for 1936" shows the justification of the appellants' fears as expressed in the petitions for rehearing of reductions in the supply of and the marketing of livestock.

> "The supply of meat animals on farms in terms of the total live weight of the three species at the beginning of 1936 probably will not be greatly different from a year earlier, *when the aggregate supply was estimated to be the smallest in more than 30 years.* With

none of these species is there any present certainty as to whether numbers on January 1, 1936, will be larger or smaller than a year earlier, and with none of them is the change, either upward or downward, expected to be large. It seems probable, however, that a considerable increase in the number of hogs on farms will occur during 1936 and some increase in cattle numbers next year is also probable.

"From 1928 to the beginning of 1934 the trend in the number of meat animals was upward. The increase during this period in terms of total live weight was about 12 per cent. Most of this increase was eliminated in 1934, largely as a result of the severe drought. The number of cattle on farms increased steadily from 1928 to early 1934 with the increase in numbers from January 1, 1928, to January 1, 1934, amounting to 11,600,000 head, or 20 per cent. By the beginning of 1935, however, cattle numbers were about 7,600,000 smaller than at the beginning of 1934. Thus, more than three-fifths of the increase occurring in the 5 years 1928-34 was eliminated by the beginning of 1935. Hog production (number of pigs raised) decreased from 1928 to 1930 and increased sharply in 1931 with little change in 1932 or 1933. Partly as a result of the 1934 drought and the resulting shortage of feed grains and partly as a result of the low corn-hog price ratio prevailing from the middle of 1933 to early 1934, the number of pigs produced in 1934 was 35 per cent smaller than in 1933 and was the smallest number produced in many years. The number of hogs on farms at the beginning of 1935 was the smallest in 50 years. Sheep numbers increased steadily from 1923 to 1932, the increase amounting to about 17,000,000 head, or 45 per cent. From 1932 to 1934, sheep numbers declined slightly but the number on January 1, 1935, was about 5 per cent smaller than a year earlier and was the smallest since 1929." (p. 53 and 54.)

This quotation contains the illuminating facts that the supply of meat animals on farms at the beginning of 1936 was the smallest in more than thirty years; that at the beginning of 1935 cattle numbers were 7,600,000 smaller than at the beginning of 1934; that hog production in 1933 and

1934 was the smallest in many years; that the number of hogs on farms at the beginning of 1935 was the smallest in fifty years; that sheep numbers on January 1, 1935, was the smallest since 1929; that these reductions were the result of the drought and the resulting shortage of feed and the result of the corn hog program. The publication continues with the following statement:

> "The net results of these different factors influencing livestock production probably will be to perpetuate a situation caused temporarily by the 1934 drought; that is, to decrease somewhat the proportion of livestock production from the area covering the Great Plains and westward and to increase the proportion in the area east of the Mississippi River and including the East North Central, East South Central, and South Atlantic States." (p. 54-55.)

Further, in respect to hogs, the following excerpt is quoted from the same reference, U. S. Department of Agriculture Miscellaneous Publication No. 235:

> "Although federally inspected slaughter of hogs during the 1934-35 marketing year, totaling 30,678,000 head, was the smallest in 25 years, it is expected that slaughter in the 1935-36 marketing year will be even smaller. The 1935 spring pig crop was estimated by the Department of Agriculture at 30,402,000 head for the United States. This is a decrease of 7,405,000 head, or 19.6 per cent, from the spring pig crop of 1934 and a decrease of 20,814,000, or 40 per cent, from the average of the spring crops of 1932 and 1933. In the North Central (Corn Belt) States the spring crop this year was 22.3 per cent smaller than that of 1934 and 42 per cent below the 1932-33 average.
>
> The number of sows to farrow in the fall season of 1935 was estimated in the June pig crop report at 3,175,000 head. This is an increase of 19.5 per cent over the very small number farrowed in the fall of 1934, but is 34 per cent smaller than the average of 1932 and 1933. The total number of litters, spring and fall, to be farrowed in 1935 was indicated in the June pig crop report to be about 8,196,000. This is a reduction of more than 10 per cent from the total of 1934

and of 41 per cent from the average of 1932 and 1933. For the Corn Belt States the reduction in total litters in 1935 is 12 per cent from 1934 and 44 per cent from the average of 1932 and 1933. If the average number of pigs saved per litter in the fall of 1935 is as much above the fall of 1934 as the spring of 1935 was over the spring of 1934, the total number of pigs saved in 1935 will be less than 50,000,000 head. This would be about 4,000,000 head less than the total number of pigs saved in 1934 and more than 31,000,000 head less than the average of 1932 and 1933. Inspected slaughter in the marketing year 1935-36 from such a production probably will total between 27,000,000 and 28,500,000 head, and be the smallest since the year 1909-10." (p. 56.)

The foregoing quotation shows the effect upon domestic supplies of the slaughter of sows by the reduction in normal pig crop. The year 1934-35 saw the smallest slaughter of hogs in twenty-five years, and the judgment of the Department of Agriculture is that for the marketing year 1935-1936, the number of hogs sold for slaughter will be even smaller.

Commenting upon the production outlook for hogs, the same reference, Miscellaneous Publication No. 235 makes the following statement:

"The end of the downward trend in hog production, which began in the fall season of 1933 apparently was reached with the small spring-pig crop of 1935, and increasing production can be expected during 1936 and 1937. How rapidly hog production will increase during the next 2 years is uncertain, since there are no other periods in which the decrease in production was so great as it was in 1934 and 1935. The nearest comparable situations to the present were those from 1908 to 1912 and from 1891 to 1896. Inspected slaughter for the marketing years 1909-10 (pig crops of 1909) decreased 7,500,000 head, or about 21 per cent, from the previous year. Hog prices in 1910 advanced sharply and the 1910 pig crop, especially the fall crop, increased markedly. Inspected slaughter for the 1910-11 marketing year increased about 4,000,000 head and in the 1911-12 year was back about to the 1908-09 level.

Between the marketing years 1891-92 and 1892-93 the estimated inspected slaughter equivalent decreased about 6,500,000 head, or 27 per cent, and it was not until the marketing year 1895-96 that it again reached the 1891-92 level. During that period, the 1894 drought occurred—probably the most severe ever known in this country with the exception of the one in 1934—and this doubtless tended to keep production from increasing more rapidly. In that period the drought occurred in the second year after production had been greatly reduced, whereas in the present period it occurred in the same year. The decrease in federally inspected slaughter for the 1934-35 year from 1933-34 amounted to 13,200,000 head, or 30 per cent. If allowance were made for the pigs bought by the Government and slaughtered in August 1933 from the 1933 pig crop, the decrease was about 39 per cent. Slaughter in the marketing year 1935-36 is expected to be about 5 to 10 per cent smaller than that in 1934-35. No such reduction, either in numbers or in percentages as has taken place in the last 2 years, has ever before occurred and how rapidly a recovery can be made is very uncertain." (p. 59.)

It is to be observed that because no such reduction, either in numbers or in percentages, as has taken place, has ever before occurred, the Department is unable to predict how rapidly a recovery can be made.

Turning to cattle, we quote from p. 60 of Miscellaneous Publication 235:

"The number of cattle on farms January 1, 1935, was 60,557,000 head, according to the estimate of the United States Department of Agriculture. This was 7,623,000 head, or 11.2 per cent, less than the number January 1, 1934, but was about 3,000,000 head more than on January 1, 1928, the last low point of the cattle-number cycle. Compared with 1928, however, all of the increase was in the number of cattle kept principally for milk (cows, heifers, and heifer calves) and there was a small decrease in the number of other cattle, mostly cattle kept principally for beef. Compared with January 1, 1934, there were reductions of 2,221,000 head,

or 6 per cent in milk stock and 5,402,000 head, or 17 per cent in other cattle.

The decrease in cattle numbers during 1934 was larger than during any year of record. It was largely a result of the severe drought which extended over most of the country west of the Mississippi River and of the purchase and slaughter of cattle and calves as a part of the drought-relief activities of the Federal Government. Had there been no drought, it is probable that some decrease in cattle numbers would have occurred in 1934, but if feed production had been fairly normal the reduction would have been relatively small. With no abnormal conditions, such as wide-spread feed shortage or production-control plans, cattle numbers would have declined for some years and another low point in numbers would have been reached in about 1939 or 1940. Most of the decrease that would have normally extended over the following 5 or 6 years therefore occurred in 1934." (p. 61.)

This quotation shows that the supply of cattle goes in cycles; that the last low point of cattle number was January 21, 1928; that another low point might have been expected about 1940 but that the decrease which would normally have extended over the period from 1936 to 1940 occurred in a single year, 1934.

On page 62 of the same Bulletin is found this most significant statement:

"Cattle marketings from all the West North Central States, except Kansas, during the first half of the year were sharply below those of the first half of 1934 and the marketings from most of the Western States were relatively small, except from California. * * * Receipts of beef steers at Chicago during the first 9 months of 1935 were much the smallest for those months in the 14 years of record, being nearly 30 per cent smaller than in 1934 and 34 per cent smaller than the average of the preceding 5 years. The number of cattle on feed in the Corn Belt States on August 1 was estimated as about 30 per cent smaller than a year earlier and the smallest for that date in many years." (p. 62.)

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It is predicted, p. 65 of Publication 235, that two or three years will be required after 1935, in States West of the Mississippi River (the Chicago Market area) to build up the reduction that occurred in 1934 in cattle.

In respect to sheep and lambs, we quote from pages 66 and 67 of Publication 235.

"According to the estimate of the Department of Agriculture, *the 1935 lamb crop of 27,630,000 head was the smallest since 1929.* It was 7 per cent, or 2,030,000 head, smaller than the 1934 crop and 4,600,000 head smaller than the record crop of 1931. The decrease from 1934 was all in the western sheep States since the native-lamb crop of 1935 was somewhat larger than that of 1934. Although the number of breeding ewes on January 1, 1935, in the native-sheep States was 2 per cent smaller than a year earlier, the number of lambs saved per 100 ewes (the percentage lamb crop) in 1935 was enough larger than in 1934 to more than offset this decrease in ewes. The native-lamb crop of 1935 was practically the same as the average native-lamb crop for the 5 years 1930 to 1934.

The 1935 lamb crop in the western sheep States was the smallest since 1927, being 11 per cent, or 2,079,000 head smaller than the 1934 crop. The number of breeding ewes January 1, 1935, was 7 per cent smaller than a year earlier and the percentage lamb crop was the smallest in the 14 years for which records are available, being 70.3 compared with 73.8 in 1934 and 78.2 the average from 1925 to 1934. The crop of 1935 was smaller than that of 1934 in all of the Western States, except California and New Mexico. The decreases from last year were relatively the largest in the late-lambing States and all of the decrease from last year was in late lambs, as the early-lamb crop (which covers lambs dropped before Mar. 15) was but little different from last year.

The small western lamb crop this year was a result of the 1934 drought. The reduction in breeding ewes was related directly to the drought through the relief activities of the Federal Government under which some 3,450,000 ewes were bought in the Western States in the late months of 1934. Because of the very bad range conditions during the summer and fall of 1934, ewes in

nearly all of the western sheep States were in poor condition at breeding time and the number of dry ewes this spring was relatively large. Death losses of ewes, although rather heavy in some States, were only about average for the western area as a whole. The favorable weather during most of the winter and early spring tended to offset the shortage of feed and the poor condition of ewes at the beginning of the winter. Weather conditions during lambing were about average, but there were above-average losses of lambs in some States as a result of the cold, wet weather in May and early June and because of the lateness of new grass.

Although the lamb crop of 1935 was materially smaller than that of 1934, the slaughter of 1935 lambs during the first 5 months of the 1935-36 marketing year (May 1, 1935, to Apr. 30, 1936) was considerably larger than during the first 5 months of the 1934-35 year. Inspected slaughter during the 5 months of this year of 7,765,000 head was 962,000 head, or 12½ per cent larger than in 1934 and the largest for the 5 months on record. This heavy slaughter during the first half of the marketing year, in view of the smaller lamb crop, indicates a reduction in the slaughter supply during the remainder of the year relatively much greater than the reduction in the size of the lamb crop." (pp. 66-67)

With reductions in supplies in hogs, cattle and sheep, all of them the lowest for many years, the allegations in the appellants' petitions for rehearing have proved themselves. The appellants were not in a position to prove when the petitions for rehearing were filed, all of the facts and figures given above. No one knew them; but as to every factor except the unexpected and unprecedented drought, the appellants could have proved the tendencies which were then in operation.

In the petitions for rehearing, the appellants alleged increased expenses. One of them was the accelerating increase in drive-ins, the most expensive form of business to handle. A publication of the United States Department of Agriculture entitled "Drive-In Receipts of Livestock 1935" shows that in respect to cattle, the drive-ins in 1932,

the year about which the testimony in the record was taken, were 14.87 per cent of receipts at the Chicago market; in 1933, 22.46 per cent; in 1934, 24.47 per cent; and in 1935, 35.27 per cent. For calves, drive-in, that is, arriving by truck rather than in carload lots, the percentage at the Chicago market of total receipts has risen from 19.94 per cent in 1932 to almost double that amount or 37.84 per cent in 1935. For hogs received on the Chicago market, drive-ins have increased in the following percentages:

1932.....16.81%
1933.....25.08%
1934.....30.52% and in
1935.....34.80%

As to sheep and lambs,—the drive-in percentage has increased at Chicago from 6.85 per cent in 1932 to 16.37 per cent in 1935.

Again the appellants knew whereof they spoke in their petitions for rehearing. In the meantime the situation of the livestock producers and shippers has improved. The February 1, 1936, issue of "Agricultural Situation" published by the United States Department of Agriculture monthly shows (p. 21) that the index number of prices received for meat animals has risen from 92 in 1931 to 118 in 1935.

The appellants do not contend that the validity or reasonableness of the Secretary's Order is to be determined by facts occurring subsequently to the entry of the Order. The appellants' position is that if the Secretary had not denied the petitions for rehearing, he could have been shown by evidence that economic conditions had changed adversely to the commission firms and that supplies of live stock were on the decrease subsequent to the year 1933 when the original hearing was had. Under the *Tagg* case it was the Secretary's duty to have permitted the appel-

lants to at least have made this attempt. Subsequent events have proved that the appellants were right. The Secretary's denial of the petitions for rehearing was arbitrary and unreasonable.

One is not compelled to come to court on the issue of confiscation with the facts already found against him.

Confiscation involves a consideration of the law and the facts. The appellants pleaded for the right, by the only possible method, a petition for rehearing, to demonstrate to the Secretary the effect of his Orders. The changed economic conditions and the effect of legislation upon the supplies of livestock were pertinent considerations as to the reasonableness of the prescribed rates. By the denials of the petitions for rehearing, the Secretary prejudged the case. If the rate order was to apply retroactively, the changing conditions and supplies urged by the appellants would not have been relevant. But a rate order looks to the future. The Secretary should have listened to the pleas of the appellants that the rates prescribed by him would be confiscatory because of the increased expenses and the decreases in volume, factors which were not known at the time of the hearing before the Secretary, and consequently were not in the record before him, but which were in existence at the time the rates were prescribed. The rates prescribed were to operate in the future and should have been made applicable to changed conditions, increased expenses and low volume. Instead the Secretary compelled the appellants to come to court with the facts already found against them, contrary to the admonition of the Court in *Prentis* v. *Atlantic Coast Line,* 211 U. S. 210, 218.

IV.

THE SECRETARY USED A SINGLE YEAR, 1932, AS A TEST PERIOD. THIS WAS INADEQUATE WHETHER HIS FINDINGS AS TO THAT YEAR WERE RIGHT OR WRONG.

At the hearing before the Secretary there was introduced in evidence audits of the business done by each of the appellants for the years 1931 and 1932. The audits were for the purpose of determination of costs (Secretary's Findings, Par. 108, R. Vol. I, p. 131). However, the functional unit cost allowed by the Secretary in his Order was derived from an analysis of the business of each of the appellants for the year 1932 only (Secretary Findings, Par. 110, R. Vol. I, p. 133).

In the same paragraph, the Secretary states that he used the year 1932 rather than the year 1931, or both years, because the year 1932 was the one next preceding the year in which the hearing was held; because a full calendar year gives due weight to the seasonal changes which take place in the marketing of livestock and because rates adequate to produce reasonable costs and reasonable profits in a low volume year should not prove to be too low in those years in which an increase in volume occurs. Referring first to the statement that a full calendar year gives due weight to seasonal changes which take place in the marketing of live stock, that statement may be accurate if full consideration is given to the word "seasonal." But there are other variations of longer time duration which occur. The Secretary did not foresee in making this statement that there was no other period in the history of the stockyards in which the decrease in production of hogs was so great as it was in 1934-35. U. S. Department of Agriculture, Misc. Publication No. 235 entitled "The Agricultural Outlook for 1936," published November, 1935, p. 56. Nor did

he foresee that during 1934-35, the slaughter of hogs was the smallest in twenty-five years, but is expected in 1936 to be even smaller (same reference). Nor did the Secretary foresee that the decrease in cattle during 1934 was larger than during any year of record; nor that the receipts of beef steers at Chicago during the first nine months of 1935 was much the smallest for those months in fourteen years of record, being nearly 30% smaller than in 1934 and 34% smaller than the average of the preceding five years (Same reference, pp. 61-62).

In making the statements in Paragraph 110 of his findings that the 1932 receipts were lower than for 1931 and if a set of rates for a low volume year were adequate, they would *a fortiori* be adequate for a high volume year, the Secretary did not have before him the facts which are now public, namely, that no other period exists in which decrease in production was so great as in 1934 and in 1935, with 1936 figured to be even less. The motive of the Secretary in taking 1932 as a test year because of its low volume is appreciated. He took a low volume year to determine costs in order that for a high volume year the rates prescribed by him would be adequate. The appellants contend that the rates prescribed were not adequate for the year 1932 and that it follows from the Secretary's own statement that rates intended by him to be adequate for the low volume 1932 year must certainly be inadequate for the years subsequent in which the volume has been even less.

By petitions for rehearing, the appellants made offers to prove that volume would decrease. These petitions were denied although the Secretary then knew of the programs of the Agricultural Adjustment Administration, including corn hog reduction. No one foresaw that the decrease in cattle numbers during 1934 would be larger than during any year of record

"largely a result of the severe drought which extended

over most of the country west of the Mississippi and of the purchase and slaughter of cattle and calves as a part of the drought-relief activities of the Federal Government." (U. S. Department of Agriculture, Miscellaneous Publication No. 235, p. 61).

In *Denver Union Stock Yard Co.* v. *United States* 57 F. (2) 735, the Secretary was criticized in reference to a determination of rates for the future upon an experience of a single year of the past. The court remarked that in estimating earnings for the future, the business world generally considers the earnings for at least a five year period in the past. This rule has received the approval of the Supreme Court in *Knoxville Water Case* 212 U. S. 1. The Court in the Denver case also said that the test period for rates should exclude abnormal years; and the court took judicial notice of a marked depression in business.

In *West Ohio Gas Co.* v. *Public Utilities Commission of Ohio*, 294 U. S. 79, the commission in fixing rates used the year 1929 as a standard. Besides the figures for 1929, there was evidence, full and unchallenged, as to the revenue and outlay for 1930 and 1931. The Commission refused to give any heed to that evidence in fixing the new rates. This it did in the face of a petition for rehearing. The court said (p. 81):

> "We think the adoption of a single year as an exclusive test or standard imposed upon the company an arbitrary restriction in contravention of the Fourteenth Amendment and 'of the rudiments of fair play' made necessary thereby."

Changed economic conditions and decrease of volume of livestock handled emphasize the necessity of an adequate test period.

In Paragraphs 100 and 101 of the Secretary's findings (R. Vol. I, pp. 126-127), the Secretary states that the proceeding was instituted during a period of severe economic depression and that both livestock producers and commis-

sion firms have felt the effect of disturbed economic conditions; that there has been an increase in items of expense; that practically all the firms had made substantial reductions in salaries of employees and owners; and that some curtailment had been made in business getting and maintenance; and that the chief factor affecting the business conducted by the appellants was a decrease in the volume of business consigned to the Chicago market for sale.

The prophecy of higher volume expressed in Paragraph 110 of the Findings (R. Vol. I, p. 133) did not materialize. Instead the volume decreased unprecedentedly. Shortly after the Secretary's Order of January 8, 1934 and on February 7, 1934, the appellants filed a petition for rehearing in which it was alleged, among other things, that the conditions which prevailed during 1933 constituted a greater change than had occurred during any twelve months period prior thereto and that during 1933, even on the old 1923 rates, substantially all of the appellants operated at a loss. This rehearing and offer of proof was denied. A second petition for rehearing was filed on April 9, 1934, again setting forth

> "the decided and profound economic changes . . . adversely affecting the market agencies at Chicago,"

during the years 1933 and 1934. This petition for rehearing was denied within three days.

The arbitrary action of the Secretary in denying the petitions for rehearing brings this case precisely within the ruling of this Court in the *West Ohio Gas Case*, 294 U. S. 79, *supra*. The only difference is that in the *West Ohio Gas* case there was already evidence in the court which the Commission had ignored, while in the instant case, the appellants offered to produce evidence which could not possibly have been procured during the time of the hearing

before the Secretary. In the *West Ohio Gas* case, the Court said at pp. 81-82:

> "The earnings of the later years were exhibited in the record and told their own tale as to the possibilities of profit. To shut one's eyes to them altogether, to exclude them from reckoning is as much arbitrary action as to build a schedule upon guess work with evidence available. There are times, to be sure, when resort to prophecy becomes inevitable in default of methods more precise. At such times, 'an honest and intelligent forecast of probable future values made upon a view of all of the relevant circumstances' is the only organon at hand, and hence the only one to be employed in order to make the hearing fair. But prophecy, however honest, is generally a poor substitute for experience. 'Estimates for tomorrow cannot ignore prices of today.' * * * We have said of an attempt by a utility to give prophecy the first place and experience the second that 'elaborate calculations which are at war with realities are of no avail.' We say the same of a like attempt by officers of Government prescribing rates to be effective in years when experience has spoken. A forecast gives us one rate. A survey gives another. To prefer the forecast to the survey is an arbitrary judgment."

In no case is the test of a single year adequate. Business uses five years. Those who have the power to regulate rates for the future should use a similar test.

In the instant case, even though the Secretary may be excused for having confined his cost studies to 1932, he was entirely arbitrary, unreasonable and unfair in refusing the petitions for rehearing and the offers of proof made therein. He could not prescribe rates on prophecy when the whole world, himself included, knew that the experience was otherwise.

V.

THE RATES PRESCRIBED BY THE SECRETARY ARE CONFISCATORY OF THE BUSINESS, PROPERTY AND SERVICES OF EACH APPELLANT AND VIOLATIVE OF THE FIFTH AMENDMENT OF THE CONSTITUTION.

At the hearing before the District Court, the appellants offered evidence to prove, among other things, confiscation. The Secretary objected to the introduction of any additional evidence, taking the position that even though the petitions for rehearing which alleged confiscation had been denied and the appellants refused a hearing to show the application of the rates prescribed to their business, nevertheless such evidence could not be adduced before the Court. The question of the admissibility of this evidence is argued in the following co-ordinate section of this Brief. The District Court admitted the evidence, subject to the objections made by the Secretary's counsel.

In general, the evidence offered before the Court was the testimony of Earle D. Mudd, a consulting accountant and statistician of many years experience both in the live stock commission field and in others. He supported his testimony by exhibits of figures and graphs to show the effect of the rates prescribed by the Secretary upon the 1932, 1933 and the 1934, up to April 30, business of each of the petitioners. Mr. Mudd's testimony is found in the record (Vol. I. pp. 212-256); and the exhibits identified and prepared by Mr. Mudd and testified to by him are identified as Petitioners' Exhibits Nos. 1 to 10, found in Vol. I of the record from pages 259 to 296.*

* Lest the identification of exhibits should prove confusing, the following explanation is made: The appellants here were respondents before the Secretary and the exhibits offered by them before the Secretary are known as Respondents' Exhibits. The exhibits offered by the Government before the Secretary are known as Government Exhibits. No exhibits were offered by the Secretary at the hearing before the Court. The exhibits of the present appellants, petitioners in the District Court, are identified as Petitioners' Exhibits.

There are not discussed in this Brief any cases which hold that rates fixed by an administrative body which are not sufficient to provide a reasonable return, or which require the rendering of a service for less than cost, are confiscatory and take property without due process of law. Nor is it necessary to discuss those cases which decide that the right to engage or remain in an occupation or business is subject to protection under the Constitution of the United States is as much his as the right to enjoy and own property and the use thereof. The applicable cases are cited under "Propositions of Law".

The effect upon commissions received is shown by Exhibit 1 to bear no relationship to whether an individual firm has a large or a small volume of business. Alexander Conover & Co., a large firm, shows a reduction of 20.09 per cent; John Clay & Co., another large firm, shows a 22.79 per cent reduction. A small firm, Louis Ambrecht Com. Co., shows a reduction of 26.98 per cent. And the firm of Adams, Corrick & Hatch, which may be denominated a middle-volume firm, would have its commissions reduced 23.06 per cent.

The percentage reductions vary from 14.09 per cent to 26.98 per cent; and both extremes are for small firms. One of the larger firms, McCausland, Hoag & Vaughan, also shows a 26.98 per cent reduction.

It is, therefore, apparent that the effect upon the respective businesses has no relationship to size or volume. Hence when the Secretary says in his Answer that the services of the appellants are necessary, but not the services of all of them, his attempt to eliminate what he calls inefficient firms has not worked out as he contemplated.

Petitioners' Exhibit 2 (R. Vol. I, pp. 266-273; discussed

in the testimony, Vol. I, pp. 216-221) is a statement of commissions, costs, and profit or loss under old rates and under the Secretary's rates for the years 1932, 1933, and the first four months of 1934. This comparison is made by the application of the Secretary's rates to the livestock received for those periods.

The group of middle columns headed "Costs" shows the costs in two manners. The four columns headed "Excluding Appraisals" shows costs incurred with no adjustment for salary appraisal.* The costs shown are the actual costs incurred; not the costs found to be reasonable by the Secretary. (No attempt is made to show that the Secretary's rates do not provide income in excess of the Secretary's allowed costs.)

The costs also are shown as including salary appraisal adjustments* so that a complete picture may be given.

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* Salary appraisal adjustments were made necessary by reason of the fact that 56, or 29 per cent of the 193 owners, did not carry themselves on the books of account at any salary whatever. In the case of other owners, they carried themselves at nominal salaries or on a drawing account. It was obvious therefore that in order to arrive at correct and consistent costs, reasonable amounts for the value of owners' services would have to be determined. This was done by the appointment of an Appraisal Committee consisting of five competent but disinterested men not engaged in the livestock commission business but acquainted with it. In making these appraisals, the committee considered the personal and business experience record of each owner, his known managerial and salesmanship ability, and records of the volume and value of business handled by the respective firms. The committee was instructed not to give any weight whatever to "business-getting" ability, or the so-called "following" which might attach to the owners.

The Government's accountant, on the other hand, in his attempt to rectify the omitted-cost situation, assumed in those cases where the owners had not carried themselves on the books at any salary whatsoever, that it would be proper to allow as a substitute therefor, whatever amounts of profits these owners had drawn during the year.

Where no profit nor salary was shown for an owner, there was not included any compensation for that owner, although the owners rendered services (R. Vol. II, p. 648). As an illustration of the reason why the petitioners could not accept the Government's method, the following tables

The "Profit or Loss" columns comprise four categories:

1. Present commissions excluding appraisals.
2. Present commissions including appraisals.
3. Secretary's commissions excluding appraisals.
4. Secretary's commissions including appraisals.

We discuss the 3rd bracket only, namely, the profit or loss under the Secretary's rates *without any adjustment of actual costs for any firm whether or not the owners drew a salary or made a profit or neither.* The comparison, therefore, is to determine profit or loss between commissions which would have been received under the Secretary's rates and costs actually paid, with no adjustment whatsoever.

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will group together those owners who were given the same appraisal by the committee, and these will be compared with the "profit" allowed in costs by the Government's accountant as a substitute therefor; and in other cases the Government's profit-salary substitutes of similar amounts will be grouped together and compared with the appraisal committee ratings:

Firm No.	Man No.	Appraisal Committee Ratings	Government's Profit—Salaries
35	1	$6,000.00	$5,907.93
74	1	6,000.00	3,370.57
8	2	5,000.00	3,985.65
79	1	5,000.00	1,874.78
64	1	4,000.00	4,792.84
91	1	4,000.00	1,567.34
79	2	3,500.00	1,874.27
82	1	3,500.00	3,713.80
12	1	3,000.00	35.12
84	1	3,000.00	3,754.58
47	1	3,000.00	1,285.28
16	2	3,000.00	529.77
9	1	3,000.00	4,907.88
48	1	18,000.00	5,777.83
35	1	6,000.00	5,907.93
19	3	10,000.00	5,300.66
9	1	3,000.00	4,907.88

These are illustrations drawn from respondents' Exhibit No. 12, and show the consist of Government cost figures from which their conclusions as to reasonable costs were calculated in some unknown fashion which they are unwilling to disclose.

This calculation in simple arithmetic shows that under the Secretary's rates

In 1932 two firms would have made a profit*
In 1933 five firms would have made a profit**
In 1934 (four months) six firms would have made a profit***

Considering all of the appellants in the aggregate as reflecting the market as a whole, there would have been losses on the same basis of comparison, Secretary's rates against costs excluding appraisal adjustments, as follows:

1932 ..... $546,509—19.33%
1933 ..... 344,231—12.94%
1934 (4 months) ..... 96,180—11.91%
(Sheet 8 of Exhibit 2, R. Vol. I, p. 273)

Petitioners' Exhibit 4 (R. Vol. I, p. 277), discussed by the witness (R. Vol. I, pp. 227-229) shows graphically what Exhibit 2, last discussed, shows in actual figures. The exhibit is a comparison of the commissions per head for the year 1932, 1933 and the first four months of 1934 under the old rates and under the Secretary's rates with the cost per head, including compensation for owners, that is, salary appraisal adjustments.

Petitioners' Exhibit 6 (R. Vol. I, pp. 283-285) discussed by the witness (R. Vol. I, pp. 230-239) compares graphi-

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* 1932
(1) Merrion & Wilkins, $7,677, to be divided between two owners. (Sheet 5 of Exhibit, R. p. 270.)
(2) Schroeder Live Stock Com. Co., $963, one owner. (Sheet 7 of Exhibit, R. p. 272.)

** 1933
(1) John Clay & Co., $16,123, four owners. (Sheet 2, R. p. 267.)
(2) Merrion & Wilkins, $3,879, two owners. (Sheet 5, R. p. 270.)
(3) National Live Stock Com. Co., $4,359, a corporation. (Sheet 5, R. p. 270.)
(4) Northwestern Live Stock Com. Co., $2,962. (Sheet 5, R. p. 270.)
(5) Schroeder Live Stock Com. Co., $673, one owner. (Sheet 7, R. p. 272.)

*** 1934, four months.
(1) Barton, Looney & Co., $357. (Sheet 1, R. p. 266.)
(2) Conklin Bros. Com. Co., $459. (Sheet 2, R. p. 267.)
(3) Kuenster Live Stock Com. Co., $1,394. (Sheet 4, R. p. 269.)
(4) McCausland, Hoag & Vaughan, $1,144. (Sheet 4, R. p. 269.)
(5) Miller, White & Woods, $112. (Sheet 5, R. p. 270.)
(6) North Western Live Stock Com. Co., $108. (Sheet 5, R. p. 270.)

cally the profit or loss under the present rates (top, heavy line) with the profit or loss under the Secretary's rates (bottom line). The supporting figures are taken from Petitioners' Exhibit 2 and the costs upon which profit or loss are computed for Exhibit 6 including salary appraisal adjustments. Near the middle of each of the three sheets of Exhibit 6 is the zero line. The exhibit shows that if salary appraisal adjustments to secure compensation to owners are included in costs, that nearly all of the firms lost money in 1932 under the old rates. The Secretary proposes further reductions, the effect of which would have increased the losses of 11 per cent in 1932 to 30 per cent under the Secretary's rates (See vertical column entitled "all" at the right-hand sheet of Exhibit 6). In 1933 the losses would have been increased from 3 per cent to approximately 24 per cent; and in the first four months of 1934 from 2 per cent to approximately 23 per cent. (See right-hand column "All" on Sheets 2 and 3 of Exhibit 6.)

In Exhibit 6, the numerals at the top of the pages represent individual firms by the same numbers by which they were identified before the Secretary. The same is true of Exhibit 4 and likewise of Exhibit 7. The exhibits show not only aggregate figures but the figures for each firm individually.

Petitioners' Exhibit 7 (R. Vol. I, pp. 286-288) discussed by the witness (R. Vol. I, pp. 239-241) is a comparison of owner's salaries plus profit or less loss under old rates, with owner's salaries plus profit or less loss under the Secretary's rates for the year 1932, 1933 and the first four months of 1934. Every point below the zero lines on each of the pages of the exhibit shows that the owner not only would get no salary and no profits but would have to pay employees out of pocket. As an example, take Firm 2 for the year 1932, shown on Sheet 1 of the Exhibit (R. Vol. I,

p. 286). Under the rates in effect during that year, the three owners of that firm received in salary and profits $9,871 (Top, heavy line in Column 2, Sheet 1). On the same basis and for the same year, the same three owners would have received $3,983 under the Secretary's rates (bottom light line), or a little over $1300 a piece as both salary and profit. These three owners devoted their entire time to the business and handled over $1,000,000 worth of live stock (R. Vol. I, p. 240).

In the case of Firm No. 4 on Exhibit 7, for the year 1933 (Sheet 2), under the Secretary's rates each owner would have received approximately $4300 as salary and profit and that firm during that year handled live stock for shippers valued at over $7,000,000 (R. Vol. I, p. 240). Firm No. 16, had the Secretary's rates been in effect in 1932, would have been unable to pay its owners anything. Instead they would have had to pay into the business $4,735 to pay salary and other expenses (R. Vol. I, pp. 240-241).

The examples in the preceding paragraph could be multiplied at length. They are not special instances, but only illustrations of a general condition as shown by the exhibit.

Before the District Court, the Secretary criticized the appellants' court exhibits generally on the ground that they did not compare income with costs held to be reasonable by the Secretary. If confiscation is to be found only by a comparison of the Secretary's costs with income under the Secretary's rates, there is no law suit left; and hence, to criticize the exhibits because they include expenses admitted by the Secretary to be unreasonable, is to evade rather than to meet the issues of this litigation.

The objections which the Secretary makes as to costs are: first, in respect to salary appraisal adjustments; and second, in respect to every other item where the actual costs are in excess of those found to be reasonable by the

Secretary. If compensation is due to owners who neither carry themselves on the books with either a salary or drawing account and who make no profits, salary appraisal adjustments must be included in costs. The costs as figured by the Government did not show any compensation for the owner even though he is admitted to have rendered service where the books showed no profit or salary for the owner (R. Vol. II, p. 648). Furthermore, in the preceding pages in this Section wherein Petitioners' Exhibit 2, showing Profit or Loss is discussed, the costs both include and exclude salary appraisal adjustments and the figures referred to in the discussion are, without exception, on the basis of the exclusion of salary appraisals.

Referring to the other criticism of the Secretary that the remaining items of cost are not those found reasonable by the Secretary, this criticism palpably begs the question about which this law suit centers, namely, the inadequacy of the costs allowed as reasonable by the Secretary and their lack of relationship to the normal, actual experience of the market.

Petitioners' Exhibit 10 (R. Vol. I, p. 295, discussed by the witness, R. Vol. I, pp. 249-250) was prepared to show that even if smaller volume firms were eliminated, there would be no substantial effect on costs or on profit. The Government's answer states that the services of the appellants are necessary, but not the services of all of them. In the Exhibit, the witness has eliminated all firms selling less than 200 cars of live stock unless they handled more than 100 cars of the most valuable live stock, cattle. The exhibit gives the number of each species of livestock handled by each firm for the year 1932, followed by commissions received and the per cent of profit or loss. The four right-hand columns of the exhibit show the allotment of the business of the small firms to the large firms in the proportion

which the volume of each of the large firms bears to the total volume. For instance, Firm No. 2 has $289 added to its 1932 commissions, thereby increasing its total commissions by that amount, and thereby decreasing its losses by an equal amount and its per cent of loss from 9.33 per cent to 8.31 per cent.

The elimination of the small firms entirely, those who receive less than 200 cars of livestock or more than 100 cars of cattle (small firms), is shown by the experience of each firm and by the fact that the average loss would be decreased only 1½ per cent, that is, from 9.51 per cent to 7.99 per cent. Of this exhibit the witness said (R. Vol. I, p. 249):

> "in order to indicate the effect on costs and on rates, I have eliminated the small firms because it has been indicated that the small firms might be responsible for high rates, because they are too small to operate efficiently, and would therefore have to have higher rates in order to pay their way".

And again the witness said:

> "But in order to make the illustration extremely favorable to the contention that the eliminating of these small firms would affect the costs and rates materially, I have considered that this business could have been handled by the larger firms without any additional expense whatsoever". (R. Vol. I, p. 250).

Confiscation is a question both of fact and of law. In this case, both law and facts are clear. When, upon a basis of actual cost only 2 firms would have made any profit under the Secretary's rates in 1932; only 5 in 1933; and only 6 in the first four months of 1934, while all the rest of the appellants would have suffered losses, there is a clear demonstration that the prescribed rates are unjust, unreasonable and confiscatory.

The appellants have fulfilled every requirement to show that the rates prescribed by the Secretary do not return actual and necessary costs and are, therefore confiscatory as to each appellant considered individually.

The Government contended before the District Court that the petition and complaint made out no case of confiscation and that even if evidence were admissible upon that issue, there being no such issue made, there was no occasion to introduce evidence in support thereof. The Government based its contention upon the assertion that aggregate computations of the experience of all of the petitioners taken together to show confiscation were irrelevant and immaterial, citing in support thereof the case of *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440. The Bill charges in Paragraph 27(e) that:

> "The rates and charges ordered into effect by said Order and said Supplemental Order are individually and severally confiscatory as applied separately to cattle and calves, swine, and sheep or goats; and each and all of said rates will fail to yield to the petitioners and to each petitioner a fair and compensatory return for stockyard services rendered by the petitioners and by each petitioner * * *." (R. Vol. I, p. 22)

Again, in Paragraph 28, it is specifically alleged on behalf of each petitioner that the orders of the Secretary will deprive each of them of their property and business without due process of law. (R. Vol. I, p. 26)

To make the allegation more specific and emphatic, Paragraph 28(a) was added by amendment to the Petition and Complaint by order of Court entered June 12, 1934. (R. Vol. I, p. 209) The amendment is as follows:

> "Each petitioner on his or its own behalf charges that the facts alleged in the foregoing paragraphs as to market experiences apply to his or its own business without substantial variation from the market experiences; that his or its own business is conducted

economically, efficiently and at reasonable costs and with the exercise of sound business judgment as to costs and expenditures; that the rates, charges and practices prescribed by said Order and said Supplemental Order, if permitted to become effective and if enforced, will deprive him or it of his or its property and business without due process of law, and will deny to him or it the equal protection of the laws in violation of his or its rights under the Constitution and laws of the United States; and that the said Order and Supplemental Order are without warrant and authority of law and if put into effect and enforced will confiscate his or its property and business without due process of law and in violation of the rights guaranteed by the Constitution and laws of the United States." (R. Vol. I, p. 209)

The joining of all the petitioners in one action is established practice both under the Interstate Commerce Act and under the Packers and Stockyards Act, 1921. Under the former act, in the case of *Missouri K. & T. R. Co.* v. *Interstate Commerce Commission*, 164 Fed. 645 (C. C. Mo.), fifty-one railway companies and their receivers asked to have an order of the Interstate Commerce Commission annulled and its enforcement enjoined on the ground that the rates prescribed therein were unreasonably low and confiscatory.

Under the Packers and Stockyards Act, the *Tagg Bros.* case, 280 U. S. 420, 74 L. Ed. 524, is authority. In that case, fifty-eight market agencies joined as plaintiffs. Certainly the Court will not require over one hundred and fifty separate suits to be brought in order to determine the validity of the Secretary's Order and Supplemental Order in this suit.

Not only does the Bill of Complaint make the specific allegation that the Order and Supplemental Order prescribed by the Secretary, if enforced, will deprive each petitioner of its property and business without due process

of law, but the proofs offered are specific as to each petitioner as to costs, returns and every other pertinent factor. To provide a factual foundation in the Bill of Complaint for the charges of confiscation made, it is alleged, Paragraph 28, that the facts alleged in the foregoing paragraphs of the bill as to the market experiences apply to the individual business of each petitioner without substantial variation. The proofs made show that allegation to be accurate. It is alleged, for instance, Paragraph 27(c) that if the rates prescribed by the Secretary had been in effect in 1932, a reduction of 25.47 per cent in gross selling commissions would have resulted, increasing the loss of 9.56 per cent actually suffered under the present rates to 32.59 per cent under the Secretary's rates. (R. Vol. I, p. 21.)

Paragraph 27(d) and (e) (R. Vol. I, pp. 21-22) alleges that the costs figured by the Secretary to be reasonable are less than actual costs of each petitioner. Paragraph 28(a) charges actual losses suffered by all of the petitioners. Paragraph 27(m) alleges that in some instances the reasonable costs of selling as found by the Secretary were more than the commissions allowed and Paragraph 27(n) alleges that the Secretary found the reasonable costs for the sale per head of cattle and calves was 42.97c and that the petitioner whose business was conducted most economically entailed an actual cost of 57.91c. In the same paragraph, similar allegations are made in the case of hogs and in the case of sheep. These specific allegations, among others, it is alleged, apply equally to each and all the petitioners as well as to all of them in the aggregate. (R. Vol. I, pp. 24-25.)

The bill of complaint in this cause charges that the returns under the Secretary's rates would be less than the cost of doing business for each petitioner and that the business of each petitioner is conducted economically, efficiently

and at reasonable cost and with the exercise of sound business judgment. Such allegations charge confiscation in the only way that it can be charged except by pleading evidence as, for example, that Petitioner A had costs of $1200 and an income of $1000 and that the $1200 was reasonably expended.

The allegations as to confiscation in the Bill are modeled after the allegations in the *Illinois Bell Telephone case*, 292 U. S. 151, 78 L. Ed. 1182, decided April 30, 1934.

The defendants quote the case of *Aetna Insurance Co. v. Hyde*, 275 U. S. 440. That case decided and under the pleadings could decide but one point, namely, that rates of insurance policies fixed by state authority on the basis of aggregate collections, could not be attacked under the Fourteenth Amendment upon the ground that they were confiscatory as to any one company. The statute of Missouri involved, authorized the fixing of rates upon a study of the aggregate profit of fire insurance companies. The statute permitted a review in the Missouri courts of the findings of the rate-making body upon the same basis, namely, the aggregate collections. As the Court says in its opinion (p. 446) the Superintendent of Insurance of Missouri was not authorized to determine as applied to any single company, whether the rates would be just and reasonable. The statute required *en masse* consideration. The review was necessarily confined to the same consideration. The plaintiff companies could not and did not claim upon the review permitted them, that on behalf of any company the reduced rates would be too low to permit that company to make a reasonable profit. The Supreme Court of the United States said that it had no jurisdiction since the Fourteenth Amendment did not reach the situation for the Missouri statute did not authorize a determination of the reasonableness of rates when applied to the business of any company.

Hence the Court was not called upon to determine whether the Order would operate to deprive any company of its property without due process of law. The suit was treated as one to obtain the review provided for by the Missouri statute. No federal question being presented, the writ of certiorari was dismissed.

To have complied with the suggestions and contentions made by the defendants, the 161 respondents before the Secretary of Agriculture would have had to file 161 separate suits; prepare as many copies of the voluminus record before the Secretary; and have secured 161 injunctions with the issuance of writs thereon. This is not the efficiency and economy for which the defendants contend in their brief. The Secretary sued all of the appellants at once. It is only fair that they all join in suing him.

The record itself is the answer to the defendants' charge that specific proofs as to each plaintiff have not been made. Attention is called to the exhibits showing the specific figures for each concern.

VI.

THE APPELLANTS WERE ENTITLED TO A TRIAL DE NOVO IN THE DISTRICT COURT BOTH ON THE ISSUE OF CONFISCATION AND ON THE ISSUE OF THE DENIAL OF PETITIONS FOR REHEARING.

The Government objected to the introduction of any evidence before the District Court on the ground

> "that the case was before the court solely on the record before the Secretary of Agriculture." (R. Vol. I, p. 211.)

The court admitted the evidence subject to objection

> "so that in case what we decide is reviewed by the Supreme Court, they will have it all there." (R. Vol. I, p. 212.)

The appellants' position is that in cases brought to en-

force constitutional rights, particularly on an issue of confiscation, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that function. Further, it is the position of the appellants that the Secretary's denials of the petitions for rehearing prevented the appellants from presenting important evidence as to changed economic conditions, diminution in volume of receipts, increasing expenses, acceleration of the percentage of truck arrivals and the like, which evidence could not have been brought to the Secretary's attention at the time of the hearing before him for it did not exist at that time. The evidence sought to be introduced by the petitions for rehearing is, in essence, like new matter arising after the entry of a decree. The Secretary would not hear the evidence and he now contends that the Court should not hear it. He would deny to the appellants all opportunity to prove the effect upon their business, severally and jointly of his orders and the changed conditions which confront the appellants in the conduct of their business.

This Court has indicated the proper procedure to be followed by parties in the decision of appellants in the *Tagg* case, 280 U. S. 420, 444. The Court said:

> "Where it is believed that the Secretary erred in his findings because important evidence was not brought to his attention, the appropriate remedy is to apply for a rehearing before him or to institute new proceedings. He has the power and the duty to modify his Order if new evidence warrants the change".

In the case at bar, the appellants followed the practice laid down by this Court and sought to have the Secretary consider the additional evidence on rehearing. This the Secretary twice refused to do. Justice requires, therefore, that the review of the decision of the Secretary should not be narrowed by the act of the Secretary in refusing to consider the additional evidence.

On the question of the admissibility of evidence on an issue of confiscation, the parallel between the Interstate Commerce Commission Act and the Packers and Stockyards Act is germane. Each act is an administrative one passed by common legislature. Each is applied by an administrative body; the orders of neither the Commission nor the Secretary are self-executing, but require resort to the courts; precisely the same language is employed in each act; and the same procedure, original and appellate, provided for in suits for injunction against orders of the Interstate Commerce Commission are made applicable to the Packers and Stockyards Act.

The Interstate Commerce Commission Act was amended in 1906 (Chap. 3591, Section 5, 34 Stat. at L. 591) and again in 1910 (Chap. 309—Section 13, 36 Stat. at L. 555). One of the general effects of these amendments has been that the courts did give greater effect to the orders of the Commission. Prior to these amendments, the practice when an order of the Commission was challenged, was for the courts to afford a trial *de novo* upon the merits and for the courts to hear and determine the cause on

> "not only the *prima facie* facts reported by the Commission, but all such other and further testimony as either party may introduce, bearing upon the matters in controversy." (*Kentucky & Indiana Bridge Co.* v. *L. & N. R. R. Co.* 35 F. 567.)

See also:

I. C. C. v. *C. B. & Q. R. Co.* 94 F. 272, 274.
I. C. C. v. *Alabama Midland R. Co.* 168 U. S. 144, 174.
Cincinnati, etc. Ry. v. *I. C. C.* 162 U. S. 184.
Texas & Pacific Ry. v. *I. C. C.* 162 U. S. 197.

Even after the amendments of 1906 and 1910 to the Interstate Commerce Commission Act, the right and the practice to hear additional evidence has been upheld. In *Mis-*

souri K. & T. R. R. Co. v. *I. C. C.* 164 F. 645, an application was made to the Circuit Court of Missouri to restrain an enforcement of the Commission. The *per curiam* opinion of Judges Van de Vanter, Hook and Adam, said:

> "It is not conceived that the scope of the inquiry which the court is authorized to make, or the effect to be given to the commission's finding or determination upon which its order is based, is intended to be in any wise different when the suit is one to annul or enjoin the enforcement of the order than when it is one to enforce obedience thereto." (649)

It thus appears that the same rule as to the taking of further evidence applies whether the application is for the enforcement or for the restraint of the order of the Commission. The opinion of the court continues:

> "It is not intended that the hearing in such a suit, whether it be of one kind or the other, shall be confined to an ascertainment of what was determined by the commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but, on the contrary, the hearing may be *de novo*, and may include the taking and consideration of evidence other than that before the commission."

Upon another phase of the instant suit, the case just cited has a further significance in that the suit was brought by fifty-one railway companies to annul and enjoin the enforcement.

In *Interstate Commerce Commission* v. *Union Pacific Railroad Company*, 222 U. S. 541, (1912), there was again an application to restrain the enforcement of a reduction in rates. From the decision it appears that the case was referred to a Master for the taking of testimony and that he made findings which were approved by the Circuit Court. No objection was raised by the Supreme Court to this procedure. Again, in *Manufacturers Ry. Co.* v. *Interstate Commerce Commission*, 246 U. S. 457, the evidence produced (four principal witnesses) before the District

Court, was considered and discussed by the Supreme Court. The evidence bore upon the issue of confiscation.

The statute providing a method for restraining the enforcement of execution of orders of the Secretary of Agriculture (Section 47, Title 28 U. S. C.) provides for application to a District Court the judge of which shall call to his assistance two other judges

"to *hear* and *determine* the application".

The statute refers to

> "the *hearing* upon such application for an interlocutory injunction shall * * * be assigned for a *hearing*".

The statute concludes with this clause

> "upon final *hearing* of any *suit* brought to suspend or set aside, in whole or in part, any order of said commission, the same requirement as to judges and the same procedure as to expedition and appeal shall apply".

It might be argued that in respect to the application for a temporary stay or interlocutory injunction, the words *hear* and *hearing*, are not used in their ordinary sense but refer rather to the submission of the motion for temporary stay or interlocutory injunction as in the case of Section 129 of the Judicial Code (Section 27, Title 28, U. S. Code) permitting appeals from orders granting or denying applications for interlocutory injunction, if it were not for the fact that the concluding clause of the statute provides for a

"final *hearing* of any *suit* brought to suspend" etc.

This language of the concluding clause, namely,

"final *hearing* of any *suit*"

can have but one meaning, namely that which has attached to the word *hearing* ever since English chancery began. It includes the introduction of evidence as well as arguments of counsel. *American Grain Separator Co.* v. *Twin City Separator Co.* 202 F. 202 (C. C. A. 8), opinion by Judge

Sanborn. A hearing in equity is the trial of a case including the introduction of evidence, the argument of the solicitors, and the decree of the chancellor. The word *hearing* means the same thing in an equity suit that the word *trial* does in cases at law. 21 C. J. 578.

The statute does not refer to nor provide for a hearing upon review upon a record already made, but it provides for the institution of a suit and the hearing thereof. This has been the interpretation of the statute in respect to proceedings which attack an order of the Interstate Commerce Commission, as we have shown above; and there is no reason to interpret the same statute differently when the proceedings of another administrative body are challenged.

A question arose, however, in the case of *Tagg Bros. & Moorhead* v. *U. S.* 280 U. S. 420, 74 L. Ed. 524. This is the principal, and as far as we have been able to find, the only case supporting the Government's contention in any measure that additional evidence was not admissible at the trial of this suit. And in that case by its own specifically stated limitation, the court did not pass on the question of admissibility when constitutional questions are involved.

The *Tagg case* arose under the Packers and Stock Yards Act and was a suit brought by fifty-eight concerns joined as plaintiffs against the Secretary of Agriculture to restrain the enforcement of a certain order of the Secretary. Upon the filing of an answer, a Special Master was appointed to hear the evidence and report his conclusions to the court. The Master admitted, in addition to the record made before the Secretary, oral evidence, which evidence the District Court held admissible. The report shows that the District Court justified the admission of the evidence and considered the same on the ground that the notice of hearings before the Secretary did not advise the plaintiffs

that the Secretary intended to fix a new schedule of rates (p. 443). The Supreme Court, however, held the notice to be adequate and that if it were not adequate, the Secretary's Order should have been set aside without inquiry at all into its merits (p. 443).

It was this situation which caused the court to say (443):

> "A proceeding under Sec. 316 of the Packers and Stockyards Act is a judicial review, not a trial *de novo*. The validity of an order of the Secretary, like that of an order of the Interstate Commerce Commission, must be determined upon the record of the proceedings before him—save as there may be an exception of issues presenting claims of constitutional right, a matter which need not be considered or decided now."

The Court expressly said

> "The question of the admissibility of the additional evidence on the issue of confiscation may, therefore, be passed, and it is passed, without decision". (445)

The Court in questioning the admissibility of evidence, cited a number of cases which are analyzed below:

1. *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287.

In this case, the Supreme Court of Pennsylvania was reversed because no opportunity had been provided by the state law for submitting the question whether rates are confiscatory to the determination of a judicial tribunal upon its own independent judgment as to both fact and law (Opinion, p. 289).

2. *Prendergast* v. *New York Tel. Co.* 262 U. S. 43.

This was an appeal from an order of the District Court temporarily enjoining the enforcement of orders of the Public Service Commission of New York upon the ground that the rates prescribed were confiscatory. The plaintiff did not offer, upon the application for the injunction, the

evidence taken before the Commission, but did submit evidence in the form of affidavits to prove that the rates prescribed would be confiscatory. The commission complained that the plaintiff had not offered the evidence taken before the Commission but this contention was overruled. That is the only question of evidence involved in the Prendergast case.

3. *Liscio* v. *Campbell*, 34 F. (2) 646 (C. C. A. 2).

The only necessary holding in this case was that the plaintiff, under the statute, was not entitled to an *ad interim* permit from the Court. Upon his application to the Court, plaintiff offered in evidence the proceeding before the administrator. The court determined the hearing upon the proceedings had before the administrator, this without objection from the plaintiff. The gratuitous language of the court as to the scope of final hearing was not upon any contested issue.

4. *L. & N. R. R. Co.* v. *United States*, 245 U. S. 463.

This was a suit by a railroad to set aside an order of the Interstate Commerce Commission. The principal contention was that the order complained of was not responsive to the application which had been made to the Commission in respect to long and short haul rates. Some of the errors assigned related to the admission of evidence by the Court. The Supreme Court held the evidence inadmissible on two grounds: First, it was inadmissible because of its character; second, on the issues presented, namely, whether the Commission's order was responsive to the application, the authority for the order would have to be determined upon the evidence introduced before the Commission (P. 466).

The question raised in the *Tagg case* was definitely settled by the Supreme Court in *Crowell* v. *Benson*, 285 U. S.

22. The suit was brought in the District Court to enjoin the enforcement of an award made by United States Employee's Compensation Commission against Benson. The award was made under the Longshoremen's and Harbor Workers' Compensation Act. The District Judge granted a hearing *de novo* upon the facts and law, expressing the opinion that the Act would be invalid if it did not permit such a hearing (37). The questions involved were whether the beneficiary of the award was an employee of Benson; and the constitutional questions as to whether the act violated the due process clause of the Fifth Amendment, and whether the act violated the provisions of Article 3 of the constitution with respect to the judicial power of the United States. We quote first the ultimate holding of the Supreme Court (65):

> "We are of the opinion that the District Court did not err in permitting a trial *de novo* on the issue of employment. Upon that issue the witnesses who had testified before the deputy commission and other witnesses were heard by the District Court. The writ of certiorari was not granted to review the particular facts but to pass upon the question of principle."

In the Court's opinion and commenting upon the constitutional questions involved, particularly the proper exercise of the judicial power of the United States in enforcing constitutional limitations, the Chief Justice said (60):

> "In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function. The case of confiscation is illustrative, the ultimate conclusion almost invariably depending upon the decisions of questions of fact."

In support of this pronouncement, it is significant that the court relied not only on the *Tagg case*, 280 U. S. 420,

74 L. Ed. 528, here relied upon by the Government; but also upon *Ohio Valley Water Co.* v. *Ben Avon,* 253 U. S. 287, 64 L. Ed. 908, and *Prendergast* v. *New York Telephone Co.* 262 U. S. 43, 67 L. Ed. 853, both of which were relied upon in the *Tagg case.*

Further, the Court said (60-61):

> "In the present instance, the argument that the Congress has constituted the deputy commissioner, a fact-finding tribunal is unavailing, as the contention makes the untenable assumption that the constitutional courts may be deprived in all cases of the determination of facts upon evidence even though a constitutional right may be involved. Reference is also made to the power of the Congress to change the procedure in courts of admiralty, a power to which we have alluded in dealing with the function of the deputy commissioner in passing upon the compensation claims of employees. But when the fundamental rights are in question, this Court has repeatedly emphasized 'the difference in security of judicial over administrative action.' "

Further the Court said (64):

> "We think that the essential independence of the exercise of the judicial power of the United States in the enforcement of constitutional rights requires that the Federal court should determine such an issue upon its own record and the facts elicited before it."

In the District Court on the question of the admissibility of the additional evidence, in addition to the *Tagg* case, counsel for the Secretary cited *I. C. C.* v. *Union Pacific R. R. Co.,* 222 U. S. 541; *Farmers' Live Stock Commission Co.* v. *United States,* 54 F. (2) 375, and *Union Stock Yards Co.* v. *United States,* 9 F. Supp. 864.

Each of the cases is upon the point of the weight to be given to the findings of an administrative agency; and have no pertinency upon the question of admissibility of additional evidence.

Whether an order prescribing rates is confiscatory, can-

not be determined until the order is published. Until the Secretary entered his orders, appellants had no way of knowing what the rates would be nor what findings the Secretary might make in respect to costs. In a system of jurisprudence which is prized for its equity and fairness and in which any litigant is entitled to a full and impartial hearing, without issues having been prejudged against him, the contention that an issue of confiscation must be determined upon a record made before the challenged rates are prescribed is directly contrary to the teachings of the language of this Court in *Crowell* v. *Benson*. Likewise, the contention of the Secretary forgets the admonition of the Court, in *Prentis* v. *Atlantic Coast Line*, 211 U. S. 210, 218, that one is not compelled to come to court on the issue of confiscation with the facts already found against him.

In *Denver Union Stock Yard Co.* v. *United States*, 57 F. (2) 735, the Court admitted evidence of the kind and character offered by the appellants in the District Court, and in support of such admission relied in part upon *Crowell* v. *Benson*, 285 U. S. 22.

In *Manufacturers' Railway Co.* v. *United States*, 246 U. S. 457, 489, this Court said:

> "It is true that so long as the Commission proceeds in accordance with the requirements of the Commerce Act and its amendments, and with proper regard for constitutional restrictions, its administrative orders, not calling for the payment of money, if made after due hearing and supported by evidence, are not subject to attack in the courts. This, as we have seen, results from the provisions of §§ 15 and 16 of the act as amended. *Interstate Commerce Commission* v. *Illinois C. R. Co.* 215 U. S. 452, 469, 470, 54 L. ed. 280, 287, 288, 30 Sup. Ct. Rep. 155; *Interstate Commerce Commission* v. *Union P. R. Co.* 222 U. S. 541, 547, 56 L. ed. 308, 311, 32 Sup. Ct. Rep. 108; *Procter & G. Co.* v. *United States*, 225 U. S. 282, 297, 298, 56 L. ed. 1091, 1096, 1097, 32 Sup. Ct. Rep. 761; *Interstate Commerce Com-*

mission v. *Louisville & N. R. Co.* 227 U. S. 88, 91, 57 L. ed. 431, 433, 33 Sup. Ct. Rep. 185. But these cases recognize that matters of constitutional right are not to be conclusively determined by the Commission; and we are not prepared to say that a party is debarred from attacking an order of the Commission upon constitutional grounds even though they were not taken in the hearing before that body."

In this case, the appellants have conformed to the procedure suggested by this Court in *Tagg* case. They not only filed one, but two petitions for rehearing. After the denial of the second petition, the appellants took the only course open to them—they applied to the Court. To have it said that the District Court and this Court is to be limited to an examination of only evidence heard by the Secretary but that evidence which he had an opportunity to consider, but refused, is not admissible, is to deprive the appellants of any means whatsoever of protecting themselves. The review of the decision of the Secretary to be effective must be a consideration not only of that which the Secretary did, but also of that which he refused and failed to do.

Conclusion.

Under the heading "Propositions of Law" the appellants have cited the cases pertinent to the issues here involved and which enunciate the principles of law which govern this case. Primarily the argument has been one of fact.

The Packers and Stockyards Act, 1921, was designed to prevent any evil. As stated by Chief Justice Taft in *Stafford* v. *Wallace*, 258 U. S. 495, 514, in speaking of the Act:

> "The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys."

The Act was regulatory. It did not contemplate, and constitutionally could not have contemplated, that the Secre-

tary of Agriculture should not only regulate packers, stockyards, and market agencies, but with dogmatic order regiment every item and element of cost of the business of a market agency at a figure which bears no relationship to the actual experience of the market. If the Secretary followed in the instant case the method of arriving at the costs and rates employed in the *Tagg Case*, the results of the application to the facts in this record brought such entirely different results that they cannot be justified. Costs held to be reasonable in the *Tagg Case* bore an adequate relationship to costs actually incurred. Particularly in respect to salesmen's salaries the Government spoke of the salaries allowed as "approximately the maximum market value of salesmanship". In the instant case the Secretary stated that the fair test of what salesmen can be purchased for is the result of bargaining on the open market; and yet the reasonable price which he awards to be paid to salesmen for each species of livestock is from $500 to $1,000 less than the average, rather than, as in the *Tagg Case*, the maximum market value.

If the Orders complained of were for fixing the wages of a railroad company or any other public utility, the rates prescribed in such Order would be based upon actual costs. Labor has the right to bargain either individually or collectively. Exactly the same conditions obtain in this suit.

Rates and charges prescribed have no relationship to actual experience. There is no evidence in the record of wasteful or extravagant expenditures. Indeed, witness after witness testified to the reduction of expenses in 1931, 1932, and 1933 by reductions in expenditures for salaries and other items of expense and through reduction in personnel of an organization, or both; and the Secretary so found (R. Vol. I, p. 127).

The results of the rates and charges and costs prescribed by the Secretary speak for themselves. The Secretary's

Orders are the imposition of the personal judgment of the Secretary for that of the owners and managers of the regulated business; and are an attempt legislatively to revise, rather than administratively to regulate, an industry.

The rates prescribed confiscate the business, property and services of the appellants and are unlawful and unconstitutional.

It is submitted that the rates prescribed and the costs allowed as reasonable have no evidence or insufficient evidence in the record to support them; that the judgment of the District Court should be reversed; and that a permanent injunction should issue, restraining the defendants from the enforcement of the prescribed rates.

Respectfully submitted,

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Counsel for Appellants.

APPENDIX A.

Packers and Stockyards Act, 1921 (Provisions of Act relating to Stockyards and stockyard dealers).

STOCKYARDS AND STOCKYARDS DEALERS.

§ 201. "Stockyard owners"; "stockyard services"; "market agency"; "dealer"; defined. When used in this chapter—

(a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;

(b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock;

(c) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyards services; and

(d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser. (Aug. 15, 1921, c. 64, § 301, 42 Stat. 163.)

§ 202. "Stockyard" defined; determination by Secretary as to particular yard. (a) When used in sections 201 to 217, inclusive, of this chapter the term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce. Sections 201 to 217 inclusive of this chapter shall not apply to a stockyard of which the area normally available for handling livestock, exclusive of runs, alleys, or passage ways, is less than twenty thousand square feet.

(b) The Secretary shall from time to time ascertain, after such inquiry as he deems necessary, the stockyards which come within the foregoing definition, and shall give notice thereof to the stockyard owners concerned, and give public notice thereof by posting copies of such notice in the stockyard, and in such other manner as he may determine. After the giving of such notice to the stockyard owner and to the public, the stockyard shall remain subject to the provisions of sections 201 to 217 inclusive of this chapter until like notice is given by the Secretary that such stockyard no longer comes within the foregoing definition. (Aug. 15, 1921, c. 64, § 302, 42 Stat. 163.)

§ 203. Registration of stockyard dealer or market agency; penalty for failure to register. After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 202 of this chapter by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless he has registered with the Secretary under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged, and the kinds of stockyard services, if any, which he furnishes at such stockyard. Whoever violates the provisions of this section shall be liable to a penalty of not more than $500 for each such offense and not more than $25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States. (Aug. 15, 1921, c. 64, § 303, 42 Stat. 163.)

§ 204. Bond and suspension of registrants. The Secretary of Agriculture may require reasonable bonds from every market agency and dealer, under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing the Secretary finds any registrant is insolvent or has violated any provision of this chapter he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary of Agriculture or a court of competent jurisdiction. (Feb. 10, 1925, c. 200, 43 Stat. 851.)

§ 205. General duty as to services. It shall be the

duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard. (Aug. 15, 1921, c. 64, § 304, 42 Stat. 164.)

§ 206. Rates and charges generally; discrimination. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and non-discriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. (Aug. 15, 1921, c. 64, § 305, 42 Stat. 164.)

§ 207. Schedule of rates; filing and exhibition; change in rates; suspension; penalties. (a) Within sixty days after the Secretary has given public notice that a stockyard is within the definition of section 202 of this chapter, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such sixty days such schedules must be filed before any stockyard services are furnished.

(b) Such schedules shall plainly state all such rates and charges in such detail as the Secretary may require, and shall also state any rules or regulations which in any manner change, affect, or determine any part or the aggregate of such rates or charges, or the value of the stockyard services furnished. The Secretary may determine and prescribe the form and manner in which such schedules shall be prepared, arranged, and posted, and may from time to time make such changes in respect thereto as may be found expedient.

(c) No changes shall be made in the rates or charges so filed and published, except after ten days' notice to the Secretary and to the Public filed and published as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect; but the Secretary may, for good cause shown, allow changes on less than ten days' notice, or modify the requirements of this section in respect to publishing, posting, and filing of schedules,

either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

(d) The Secretary may reject and refuse to file any schedule tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Secretary shall be void and its use shall be unlawful.

(e) Whenever there is filed with the Secretary any schedule, stating a new rate or charge, or a new regulation or practice affecting any rate or charge, the Secretary may, either upon complaint or upon his own initiative without complaint, at once, and if he so orders without answer or other formal pleading by the person filing such schedule, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, charge, regulation, or practice, and pending such hearing and decision thereon the Secretary, upon filing with such schedule and delivering to the person filing it a statement in writing of his reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, regulation, or practice, but not for a longer period than thirty days beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, regulation, or practice goes into effect, the Secretary may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing cannot be concluded within the period of suspension the Secretary may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, charge, regulation, or practice shall go into effect at the end of such period.

(f) After the expiration of the sixty days referred to in subdivision (a) no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished at the stockyard have been filed and published in accordance with this section and the orders of the Secretary made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in

the schedules filed and in effect at the time; nor refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from bona fide returning to its members, on patronage basis, its excess earnings on their livestock, subject to such regulations as the Secretary may prescribe); nor extend to any person at such stockyard any stockyard services except such as are specified in such schedules.

(g) Whoever fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall be liable to a penalty of not more than $500 for each such offense, and not more than $25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(h) Whoever willfully fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall on conviction be fined not more than $1,000, or imprisoned not more than one year, or both. (Aug. 15, 1921, c. 64, § 306, 42 Stat. 164.)

§ 208. Unreasonable or discriminatory practices generally. It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful. (Aug. 15, 1921, c. 64, § 307, 42 Stat. 165.)

§ 209. Liability to individuals for violations; enforcement generally. (a) If any stockyard owner, market agency, or dealer, violates any of the provisions of sections 205, 206, 207, or 208 of this chapter, or any order of the Secretary made under sections 201 to 217 inclusive of this chapter, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as provided in section 210 of this chapter, or (2) by suit in any district court of the United States of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, but

the provisions of this chapter are in addition to such remedies. (Aug. 15, 1921, c. 64, § 308, 42 Stat. 165.)

§ 210. Proceedings before Secretary for violations generally; action to enforce order of Secretary. (a) Any person complaining of anything done or omitted to be done by any stockyard owner, market agency, or dealer (hereinafter in this section referred to as the "defendant") in violation of the provisions of sections 205, 206, 207, or 208 of this chapter, or of an order of the Secretary made under sections 201 to 217 inclusive of this chapter, may, at any time within ninety days after the cause of action accrues, apply to the Secretary by petition which shall briefly state the facts, whereupon the complaint thus made shall be forwarded by the Secretary to the defendant, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be specified by the Secretary. If the defendant within the time specified makes reparation for the injury alleged to be done he shall be relieved of liability to the complainant only for the particular violation thus complained of. If the defendant does not satisfy the complaint within the time specified, or there appears to be any reasonable ground for investigating the complaint, it shall be the duty of the Secretary to investigate the matters complained of in such manner and by such means as he deems proper.

(b) The Secretary, at the request of the livestock commissioner, board of agriculture, or other agency of a State or Territory, having jurisdiction over stockyards in such State or Territory, shall investigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subdivision (a).

(c) The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before the Secretary, by any provisions of sections 201 to 217 inclusive of this chapter, or concerning which any question may arise under any of the provisions of sections 201 to 217 inclusive of this chapter, or relating to the enforcement of any of the provisions of sections 201 to 217 inclusive of this chapter. The Secretary shall have the same power and authority to proceed with any inquiry in-

stituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money.

(d) No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(e) If after hearing on a complaint the Secretary determines that the complainant is entitled to an award of damages, the Secretary shall make an order directing the defendant to pay to the complainant the sum to which he is entitled on or before a day named.

(f) If the defendant does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the defendant or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit. (Aug. 15, 1921, c. 64, § 309, 42 Stat. 165.)

§ 211. Order of Secretary as to charges or practices; prescribing rates and practices generally. Whenever after full hearing upon a complaint made as provided in section 210 of this chapter, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services; is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed. (Aug. 15, 1921, c. 64, § 310, 42 Stat. 166.)

§ 212. Prescribing rates and practices to prevent discrimination between intrastate and interstate commerce. Whenever in any investigation under the provisions of sections 210 to 217 inclusive of this chapter, or in any investigation instituted by petition of the stockyard owner or market agency concerned, which petition is hereby authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner or market agency, for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of livestock, causes any undue or unreasonable advantage, prejudice, or preference as between persons or localities in intrastate commerce in livestock on the one hand and interstate or foreign commerce in livestock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce in livestock, which is hereby forbidden and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation, or practice thereafter to be observed, in such manner as, in his judgment, will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners or market agencies parties to such proceeding affected thereby, the

law of any State or the decision or order of any State authority to the contrary notwithstanding. (Aug. 15, 1921, c. 64, § 311, 42 Stat. 167.)

§ 213. **Prevention of unfair, discriminatory, or deceptive practices.** (a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with the receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling, in commerce at a stockyard, of livestock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subdivision (a), the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist. (Aug. 15, 1921, c. 64, § 312, 42 Stat. 167.)

§ 214. **When orders effective generally.** Except as otherwise provided in this chapter all orders of the Secretary under sections 201 to 217, inclusive of this chapter, other than orders for the payment of money, shall take effect within such reasonable time not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction. (Aug. 15, 1921, c. 64, § 313, 42 Stat. 167.)

§ 215. **Failure to obey orders generally; punishment.** (a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 211, 212, or 213 of this chapter shall forfeit to the United States the sum of $500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various district attorneys, under the direction of the Attorney General,

to prosecute for the recovery of forfeitures. The costs and expense of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. (Aug. 15, 1921, c. 64, § 314, 42 Stat. 167.)

§ 216. Court proceedings to enforce orders; injunction. If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If after hearing the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same. (Aug. 15, 1921, c. 64, § 315, 42 Stat. 167.)

§ 217. Proceedings for suspension of orders. For the purposes of sections 201 to 217 inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of sections 201 to 217 inclusive of this chapter. (Aug. 15, 1921, c. 64, § 316, 42 Stat. 168.)

APPENDIX B.

Provisions of statutes relating to venue, jurisdiction and appeal (from U. S. Code, Title 28).

§ 43. Venue of suits relating to orders of Interstate Commerce Commission. The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, c. 32, 38 Stat. 219.)

§ 44. Procedure in certain cases under interstate commerce laws; service of processes of court. The procedure in the district courts (a) in respect to cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money shall be as provided in sections 45, 45a, 47a, and 48 of this title and (b) in respect to cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission shall be as provided in sections 45, 45a, 46, 47, 47a and 48 of this title. The orders, writs, and processes of the district courts may in the cases specified in this section and in the cases and proceedings under sections 20, 43 and 49 of Title 49, run, be served, and be returnable anywhere in the United States. (Oct. 22, 1913, c. 32, 38 Stat. 220.)

§ 45. (Judicial Code, section 209.) District courts; practice and procedure in certain cases. The jurisdiction of the district courts of the cases specified in section 44 of this title, and of the cases and proceedings under sections 20, 43 and 49 of Title 49, shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the district court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court. (June 18, 1910, c. 309, § 1, 36 Stat. 539; Mar. 3, 1911, c. 231, § 209, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)

§ 46. (Judicial Code, section 208.) Suits to enjoin orders of Interstate Commerce Commission to be against United States. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the court, in its discretion, may restrain or suspend, in whole or in

part, the operation of the commission's order pending the final hearing and determination of the suit. (June 18, 1910, c. 309, § 3, 36 Stat. 542; Mar. 3, 1911, c. 231, § 208, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)

§ 47. Injunctions as to orders of Interstate Commerce Commission; appeal to Supreme Court; time for taking. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit: Provided, That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction 'shall be

given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. (Oct. 22, 1913, c. 32, 38 Stat. 220.)

§ 47a. (Judicial Code, section 210.) Appeal to Supreme Court from final decree; time for taking; priority. A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of the court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, c. 231, § 210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)

APPENDIX C.

Buying Charges.

In addition to selling livestock on a commission basis, there are buying operations. This constitutes a relatively small part of the business at the market. Rather than inject the issues in respect to buying costs and charges in the main part of the brief, they are here treated briefly.

All kinds of livestock are bought on a commission basis. This service is performed by firms who do no buying of livestock for their own account; by those who take title to part of their purchases and re-sell on a commission basis; by firms who maintain a separate personnel for selling; as well as buyers who do nothing but buy livestock on a commission basis.

The order buying firms who do not receive or sell livestock on a commission basis, buy, on order, various kinds of animals for slaughter by meat packers whose plants are located in various parts of the United States. Much of the livestock which is shipped out of the Chicago market is bought on special or standing orders on a commission basis by such order buyers. The buying activities are briefly treated in Paragraphs 60, 61, 62 and 63 of the Secretary's Findings (R. Vol. I, p. 96-97). Feeding and breeding sheep and lambs, cattle, calves and swine are bought by some of the appellants.

The only findings as to buying costs appear at Paragraph 159, 160 and 161 of the Findings (R. Vol. I, p. 181-182). The existing rates are found to be unreasonable and unjustly discriminatory (Par. 168, R. Vol. I, p. 185-188). The order is that

> "The rates for buying livestock of the various species shall not be in excess of those for selling like species."

In Paragraph 159 of Findings (R. Vol. I, p. 181), the Secretary finds in respect to buying costs that they may be more or less than the cost of selling; that the buyer may find it necessary to traverse the entire stockyard in search of livestock suitable for his order, and after such effort may not be able to collect it; that he may be able to fill his order only by purchasing a few here and there; that considerable yard work is involved in assembling livestock and assorting it according to orders; that it becomes necessary to hold livestock bought on order until a sufficient number can be obtained; that there is a wide variation in accounting work entailed in making different purchases; that buying operations require a greater amount of capital than selling operations; that expenditures for getting and maintaining business are greater; and that commission firms who do both buying and selling with the same organization, do not set up any segregations of expenses incurred as between buying and selling.

Except for these general comments, the Secretary made no findings as to what the costs for buying were during 1932; or what the expense was for any buying service.

Hence there is nothing on which to base his order of unreasonableness of existing rates; or his order that charges for buying services should not exceed those for selling. The order is therefore void.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 655

C. H. ACKER, DOING BUSINESS AS C. H. ACKER & COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE, ET AL.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

REPLY BRIEF FOR APPELLANTS.

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THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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REPLY BRIEF FOR APPELLANTS.

ARGUMENT.

I.

THE ALLOWANCES FOR SALARIES OF SALESMEN ARE INADEQUATE AND WITHOUT FOUNDATION IN EVIDENCE.

The appellants asserted in their principal brief that the average cost of owner and employee cattle and calf salesmen in 1932 was $5,608.08 (p. 40, 82, 86); and that this amount exceeds by $1,108 the $4,500 allowed by the Secretary as a reasonable annual salary for a cattle and calf

salesman. This figure is attacked by the Government in its brief* on the ground that the cost figures used by the appellants include excessive appraised values for the services of owners.

The answers to this attack are many:

1.

The Government allowed no profit and no salary for an owner where the books of the firm did not show a salary or drawing account and where there was no profit—this although the owners rendered services (R. Vol. II, p. 648). Fifty-six, or twenty-nine per cent of the 193 owners, did not carry themselves on the books of account at any salary whatever. Hence, because all costs were not included for salesmen's services, the Government's costs are low. To correct this, the appellants made use of salary appraisal adjustments discussed in our main brief at page 116. In short, to arrive at correct costs, reasonable amounts for the value of owners' services were determined by an appraisal committee consisting of five competent but disinterested men not engaged in the livestock business but acquainted with it, which Committee had available the business records of each owner, his known managerial and salesmanship ability, and records of the volume and value of business handled. The inclusion of the allowance of compensation to owners who made no profits or who carried themselves on their books at no salary or drawing account was justified and necessary if costs were to be accurately found. And in any event if the appellants' cost figures are to be deemed too high because including items not spent even though the services were actually performed, the Government figures are by the same token too low for by the admission of the

* It is impossible when this Reply Brief is written, April 1, 1936, to refer to pages of the Government's brief because final copies thereof have not yet been received by appellants' counsel.

Government's accountant upon the stand, no compensation for an owner salesman was included where the books showed no profit and no salary for such owner (R. Vol. II, p. 648).

2.

Whether in comparing salesmanship salary allowance made by the Secretary with the market experience, there is considered the costs as found by the Government or the costs as found by the appellant, the argument is precisely the same. Indeed, the Government's own figures ground the argument for the appellants as well as do the appellants' figures. The Secretary's Findings (Par. 132, R. Vol. I, p. 147-8 and Government Exhibit 49, p. 283) show that in 1932, out of 115 employed cattle salesmen, 15 received $6,000 or more; that 10 received from $5,000 to $6,000; and that 29 salesmen, or one-quarter of the 115 employed, received more than the Secretary deemed reasonable, namely, $4,500; and this award is made in the face of the Secretary's statement in his Findings (Par. 134, R. Vol. I, p. 149) that

> "The salaries of the employed salesmen are the result of bargaining and afford a fair test of what salesmanship can be purchased for in the open market."

If the fair test is the purchase price on the open market, as the Secretary states, a figure which would exclude the 29 best employed salesmen at the yards does not comply with this fair test.

The appellants do not pay high salaries to salesmen from choice. Obviously the appellants would prefer, if they could, to pay only $4,500. Bargaining furnishes the market value, not desire or prophecy. A $2,000 salesman cannot bargain for and receive $6,000. That salesman gets $6,000 because he is worth it to the appellants; and his worth to the appellants is measured by the services which he per-

forms for the patrons of the market,—the producers of livestock.

In the *Tagg* case, only one-tenth of the salesmen received as much as the Secretary deemed reasonable; in the instant case, the Secretary's award would deprive the appellants of the services of the 29 best salesmen at the market.

Turning attention to hog salesmen salaries, the average cost as figured by the appellants is $4,188, including owner and employee salesmen; the Secretary would allow $3,600. On the Government's own figures, over one-third of the employed hog salesmen, or 22 out of 61, received in 1932 more than $3,600 (R. Vol. I, p. 148, Government Exhibit 49, p. 284). In the *Tagg* case the Secretary allowed $4,000 for hog salesmen; and 15 of the 25 employed salesmen at the Omaha market received less than $3,000 per year. Here again, as in the case of cattle, the Secretary would deprive the shipper of live stock of the services of the best third of the hog salesmen at Chicago.

The situation is the same in respect to sheep salesmen. One-third of the 16 employed sheep salesmen in 1932 received more than the $4,000 allowance of the Secretary.

Consequently in respect to the salary of salesmen for each species of live stock, the Secretary cannot justify his findings as he did in the *Tagg* case by the assertion that

> "these findings represent approximately the maximum market value of salesmanship."

(Government Brief, *Tagg* case, p. 31; R., *Tagg* case, pp. 33-34).

3.

It was asserted in the appellants' main brief (p. 93) that for every item of expense except salesmen's salaries, the Secretary tried to find a figure bearing a relationship to the normal; and that as to every item of cost in the Sec-

retary's analysis of costs, except the salary of salesmen, the Secretary in his findings listed from highest to lowest, the amount of actual costs of the firms. The Government's Brief admits this difference in the statement that

> "It demonstrates merely that the actual expenses incurred by the appellants for yarding and office expense more nearly approach the standard of reasonableness then do the average expenses which they claim to have incurred for salesmanship."

In other words, the Government contends that the test of what is reasonable is not experience and actuality but what the Secretary thinks is reasonable. If there were any evidence in the record (and the fact that the Government has pointed to none demonstrates the truth of this statement) that salaries paid to salesmen were not actually incurred and were not, in the judgment of the management of the businesses deemed necessary, then there might be a justification for the Secretary to make an allowance for salary of salesmen which does not comply with the Secretary's own definition of a fair test, namely:

> "The salaries of the employed salesmen are the result of bargaining and afford a fair test of what salesmanship can be purchased for in the open market."

4.

The appraised salary adjustments increased costs as found by the appellants 11 per cent over the costs found by the Government. Hence the quibble which the Government makes over appraised salaries and the attack upon the appellants figures is of no substance. The Government's own figures are not materially different from those of the appellants; the comparison with the *Tagg* case is the same regardless of whose figures the court adopts; and the lack of compliance with the Secretary's own definition of a fair test is likewise the same.

II.

THE POTENTIAL PERFORMANCE REQUIRED OF SALESMAN BY THE SECRETARY IS A HYPOTHETICAL CONDITION IMPOSSIBLE OF ACHIEVEMENT.

The Secretary would require of a cattle salesman at the Chicago yards 1,000 cars per year against a market average in 1932 of 392 carload equivalents per salesman. Of a hog salesman, the Secretary requires a performance of 1,060 carloads per year; the market average was 385 carloads in 1932. For sheep salesmen the Secretary would demand a performance of a sale of 1,035 carloads per year. Actual performance averaged 465 cars. (Respondent's Exhibit 12, Schedule 24.)

In the Government's brief in the table showing the performance per salesman in carloads or carload equivalents in 1932, four firms are shown as having achieved the goal demanded by the Secretary. The appellants allege that only two firms reached that average. The point of this discussion is not merely to argue whether the figure four or the figure two is the accurate figure; but to point out that the carload equivalent of average performance of salesmen as set up by the Government exceeds in nearly every instance the actual performance of such salesmen. The uncontradicted testimony of the witnesses tells in respect to each salesman how many carload equivalents were sold; and the Government accepts those figures as to what was actually done. The Government, however, in finding averages reflects a different and a higher figure.

For instance in respect to the firm of John Clay, firm number 18, the record shows that in the year of 1932 that firm sold 5,694 carload equivalents of cattle and calves. (Respondents' Exhibit 12, Schedule 24.) That firm had five

cattle salesmen: McAdams, White, DuPlan, Summers, and Johnson. The average per man was therefore 1,139 cars, as admitted by the Government in its brief under the heading "The Secretary's selection of figures as to reasonable salesmanship performance * * * is fully supported by the evidence."

In another place in its brief, the Government alleges that the average performance per salesman of cattle and calves of John Clay & Co. in 1932 was 1,668 carload equivalents. This figure is arrived at by dividing the number of carload equivalents sold by that firm by 3.45 salesmen instead of 5, thus boosting the average performance for that firm by 500 cars per man.

The Government's justification for thus boosting the average performance per salesman is that it considered only the time of a salesman spent in the selling function. Thus if a salesman helped yard cattle, wrote letters at night after the market closed, or went to the country to advise customers over the week-end and when there was no market, he was not a full-time salesman.

In similar fashion, the number of carload equivalents per salesman in 1932 for firm No. 4 is increased from 884 cars per man to 1,373, by using 4.05 salesmen rather than 6 salesmen as shown by the testimony of L. W. Conover (R. Vol. II, p. 952) and Respondent's Exhibit 12—Schedule 24, Government Exhibit 15, Schedule C.

John Clay & Co. was one of the firms achieving the goal set by the Secretary of 1,000 carload equivalents per salesman per year, this firm showing an average of 1,133 cars, which the Government in one place admits and in another denies. The other firm reaching the Secretary's goal is firm No. 66, The National Live Stock Commission Company. This firm had an average performance per man for cattle and calves in 1932 of 1,043 carload equivalents.

The Government says that the number of carload equivalents per salesman for this firm was 1,210, arriving at this figure by dividing the total carload equivalents by 4.37 salesmen (Government's Exhibit 49, p. 281) rather than by five, the number of salesmen actually employed. (Respondent's Exhibit 12—Schedule 24; R. Vol. II, p. 769.) As pointed out in our main brief, John Clay & Co. and National Live Stock Commission Company have a cattle and calf clientele made up principally of large operators, who ship in carload lots rather than carload equivalents, thus reducing the number of drafts per consignment and enabling the salesmen of those firms to make a better average than the market run (Main Brief, p. 36, *et seq.*).

It is unnecessary to state other and further instances. The same boosting of performance obtains not only in respect to cattle and calves but also in respect to hogs and sheep. No single firm reached the Secretary's goal in respect to hogs; only two, in the case of sheep.

In speaking of potential performance, the Secretary and his counsel frequently use the expression "if he had them to sell." The meaning which the Secretary implies to this expression is that if there were fewer market agencies in Chicago, those remaining would have more live stock to sell. Consequently, the Secretary determines that even though the market average per cattle and calf salesman is 392 carload equivalents, a reasonable performance would be 1,000 carload equivalents. But the expression "if he had them to sell" means much more than this. When the witnesses used that expression, as they frequently did, they referred to all the conditions attendant upon the sale of live stock; namely, the market conditions, whether good or bad, the condition of the live stock, its mode of arrival, whether it arrived in a shipment of single or plural ownership, whether a consignment contained one species or mixed

species, whether a consignment required only one draft or ten drafts, whether the cattle in one consignment were of prime steers of the same weight and condition, or whether such consignment of cattle consisted of two steers, three butcher cows, four calves, and two bulls.

If a witness stated that on one day he could sell ten carloads, the Secretary found that he could sell ten carloads every day upon the hypothesis that if one can run 100 yards in ten seconds on one day on one track he can run 100 yards in 10 seconds any other day upon any other track; or that if he can run 100 yards in 10 seconds, he can run 1,000 yards in 100 seconds. This is a purely theoretical hypothesis whether applied to a cattle salesman or to a track man. What the evidence shows is done should be taken in arriving at performance and cost rather than a prophecy as to what might be done.

We pointed out in our Main Brief (page 26, *et seq.*) not only that the Secretary's hypothesis is wrong but that the alleged testimony upon which he bases his deductions is not found in the record.

The Secretary reached his findings as to reasonable performance and as to the salary of salesmen by what he variously terms "the exercise of judgment" and "informed judgment." A judgment is a formation of an opinion concerning something by exercising the mind upon it. If the Secretary's findings had a relationship to what is done, his explanation would be understandable; but when he says that reasonable performance is the sale of 1,000 cars of cattle and calves per year per man when the market average is only 392, and when witness after witness testified that his capacity was measured by his actual performance, the Secretary's exercise of judgment partakes of the nature of a divine or unsearchable sentence.

The Secretary states under the heading "The determina-

tion of reasonable functional unit costs" that if he had adhered to any mathematical average he would have violated his own principle "which he had laid down for his own guidance" that is, a determination of what is reasonable. If the Secretary is to be permitted to say what is reasonable and what is not reasonable when there is no evidence found in the record or pointed out by the Government of inefficiency or lack of prudence or industry, there was no need of a hearing or the taking of evidence in this case. Why employ Government accountants and call many witnesses to determine what actual performance is when all that evidence is discarded? When the Secretary found that reasonable performance was 1,000 carload equivalents per man, he made a demand reached by only two firms and set up a goal of achievement so improbable that three-quarters of the cattle salesmen at Chicago reached it less than half-way.

The Secretary's minimum potential performance, that is, in the case of cattle, for instance, 1,000 cars per annum per salesman, must be postulated upon the co-ordination of a vast plurality of facts that never can synchronously exist. The variations in character, in numbers, and in times of arrival of the live stock,—the variations in demands among the buyers, dependent upon many economic factors such as markets, and even tastes,—the variations in weather conditions, feed supplies and other similar factors that circumstance the producers in the various parts of the country from which the live stock is shipped, must, of necessity, be placed under a control that only the imagination can bring into play if the performance that the Secretary demands is to be brought within the realm of probability. Conditions which exist in respect to performance are as they are because of the nature of the industry served. They cannot be controlled or regimented by man.

The Secretary's inquiry into the performance of salesmen was in respect to numbers sold and salaries paid. The only basis upon which the Secretary pretends any inefficiency in performance is upon what he judges to be too small a number; but the only endeavor to secure facts upon which to form a judgment other than upon the numbers themselves is found in a few sporadic instances of large sales made under special circumstances, and a few opinions that appear from the record not to have been grounded upon any experience either of the kind or of the duration that would warrant the Secretary's conclusions. (Findings, paragraph 125-127, R. Vol. I, p. 143-5; Main Brief, p. 26 *et seq.*)

One of the outstanding criticisms of the Government brief is the constantly repeated attempts on the part of the Government to support what the Secretary did by a reference to his findings as to what he considered, rather than meeting the challenge of pointing to the specific evidence upon which such findings were based.

The record-blind judgment of the Secretary in respect to salesmen's salaries is not helped by associating therewith the equally record-blind judgment in respect to performance. It is still an endeavor of the blind to lead the blind.

We have already pointed out that in the *Tagg* case the Secretary fixed the salesman's salary upon the basis of the maximum salaries paid. It should be noted that in that case, the Government justified the Secretary's order by pointing out that he associated therewith approximately the maximum volume. In the instant case, this treatment has been entirely departed from by employing a fiat-made low salary and disregarding the actual performance through the substitution thereof of a hypothetical one, two and one-half times as great as the actual (1000:392) and

one which the facts as to the nature of the business show to be impossible of realization.

III.

THE SECRETARY'S OWN FIGURES SHOW THAT THE UNIT COSTS FOR EACH SPECIES ARE LESS THAN THE ACTUAL COSTS OF ALMOST EVERY FIRM.

The departure by the Secretary from the evidence of this record in respect to costs and the extent to which he exercised his judgment in finding a reasonable cost is no where better illustrated than in the Government Cost Studies (Government Exhibit 49). In respect to each species of live stock, the per head costs, *found by the Government,* exceed the reasonable unit costs for the respective species, as found by the Secretary, with the exception of some half dozen instances which are explained as not typical examples. How the Secretary can justify the costs allowed by him and denominated by him as reasonable, surpasses understanding, when there is no charge of and no evidence of waste, extravagance, improvidence or want of industry. Certainly the Court should require a better answer than the Government makes, namely, the exercise of judgment. If there were evidence in this record that salesmen were not attentive to their duties or that padded expense accounts for country trips were found, or that money was heedlessly and recklessly spent, with or without the sanction of the managers of the business, then there would be a case for the exercise of judgment. But lacking any such evidence, the basis of the Secretary's exercise of judgment demands explanation. Judicial judgment must be founded on fact.

In Government Exhibit 49, beginning at page 7, the Government accountant lists for cattle and calves for the year 1932 a comparison of income and costs per car and per

head for each market agency at the Chicago Yards. Since the Secretary's reasonable costs for each species purport to include all factors of cost and are on the per head basis, the comparison with actual per head costs, as found by the Government accountant, is an exact one. The exhibit, pp. 7, 8 and 9, lists each firm by number in the lefthand column and opposite that number appear in respective columns to the right the income per car, the costs per car, the income per head, and the costs per head,—all for cattle and calves. Pages 10, 11 and 12 deal in a similar manner with hogs; and pages 13, 14 and 15 deal in a similar manner with sheep.

The Secretary's allowance per head for cattle and calves is $.4297. Of the more than 100 firms shown as handling cattle and calves in the year 1932, all but 4 had per head costs exceeding the allowance of the Secretary.

One of these exceptions is Firm No. 31. Page 49 of Government Exhibit 49, shows that this firm had a total income of $408; and Government Exhibit 15-31 shows that this income was derived from the sale of seconds, sold by Firm No. 31 for a speculator. Such sales are made for half the regular commission, the sale being consummated by a regular commission firm which received the other half of the commission. Because such other firm furnishes the yarding and other services, the only expense to Firm No. 31 was the half of the commission which was paid to the agent. Firm No. 31 had no office facilities, no capital, and incurred no other expense than the division of the commissions which accounts for the fact that of the $408 income, $204 was expense and $204, profit.

A second exception is Firm No. 72 which had a per head cost of $.2391. Government Exhibit 49, p. 50, shows that Firm No. 72 had no business getting and maintaining expense, no yarding expense, no administrative expense; and

Government Exhibit 15-72 shows that this firm conducted its business by splitting commissions with another firm which furnished the physical and personal facilities with which the business was conducted (R. Vol. I, p. 374).

A third exception is Firm No. 47 whose unit costs for cattle and calves was $.2965. Government Exhibit 15-47 shows that the selling commissions for this firm were $71.75 and that the balance of its income of $1,563.25 was for buying services.

The fourth exception is Firm No. 90, whose unit costs for cattle and calves was $.2360. This is the firm of W. R. Smith & Son, which deals exclusively in sheep (Government Exhibit 15-90, Schedule 1).

Except for the four instances just noticed, every firm had a per head cost for cattle and calves in excess of the amount deemed reasonable by the Secretary.

Significantly, the four exceptions noted did a very small volume of business in cattle and calves, thus disproving the assertion and inference made by the Secretary that small volume firms should be eliminated. So it cannot be upon the basis of that assertion and inference that the Secretary exercises a judgment upon the record.

Turning to the species hogs, there are found only three instances in which the per head costs as found by the Secretary are less than the $.1323 allowed by the Secretary as reasonable. All of the rest of the more than 100 firms handling hogs had expenses exceeding that amount per head.

We refer to the three exceptions:

(1) Firm No. 64 had a per head cost for hogs of $.1193. Firm No. 64 is the Nalley Live Stock Commission Company, which pays the Schroeder Live Stock Commission Company 35 per cent of all commissions collected on business consigned to Nalley, and all of which is sold by Schroeder

salesmen at the expense of and with the facilities of Schroeder (R. Vol. II, p. 916 and 918).

(2) Firm No. 72, unit cost per head for hogs is $.0429. This is the same firm which was an exception in the case of cattle and calves and is owned by John Patterson & Son. Strader Bros. sell all of Patterson's hogs with their own facilities and expense. Sinclair Commission Company handles all the finances and collects for livestock and make remittances for Patterson for which they get 25 per cent of Patterson's commission. Strader gets one-half of the commission after deducting the 25 per cent which Sinclair gets for clearing (R. Vol. II, p. 375).

(3) The third exception is Firm No. 82 which had a unit cost for hogs of $.1154. Government Exhibit 15-82, Schedule 2, shows that the salesmen of this firm were owners who drew no salaries and employed no salesmen and cleared its business through another firm.

In respect to sheep, no single firm had a unit or per head cost below the $.0485 allowed by the Secretary as reasonable. Every firm exceeded, by the Secretary's own figures, his total reasonable cost per head for sheep.

The astounding facts reflected in the pages of Government Exhibit 49 referred to above are also shown in the table at the top of page 90 in the appellants' Main Brief in which the comparison is made between the Secretary's reasonable cost per car and the figures found by the Government to be the actual cost per car.

IV.

THE GOVERNMENT'S ASSERTION THAT THE EVIDENCE JUSTIFIES THE PERFORMANCE DEMANDED OF SALESMEN IS ERRONEOUS AND BASED UPON ISOLATED STATEMENTS FROM THE TESTIMONY OF WITNESSES, IGNORING THE COMPLETE STORY TOLD BY SUCH WITNESSES.

In the Appellants' Main Brief, page 26 *et seq.*, the Appellants discuss the paraphrased findings of the Secretary in respect to salesmen performance (Paragraph 125, R. Vol. I, p. 163), demonstrating that each statement made in that paragraph incorrectly reflects the evidence in the record. The Secretary's order cannot be predicated upon his findings if the findings are not supported by evidence.

In their brief, Government counsel refer to the testimony of Mr. Mollin, Secretary of the American Live Stock Association. Three times in the testimony quoted in the Government's brief from Mr. Mollin, he said "I think"; then follow his conclusions as to what he "thinks." The testimony of this witness is dealt with completely on pages 27, 28 and 29 of the Appellants' Main Brief. His entire testimony as to what he "thinks" can be done is demolished by his statement (R. Vol. I, p. 313) that he had

"seen sales made occasionally."

He further stated that he was not familiar with the situation after the year 1929 (R. Vol. I, pp. 316-317).

The Government refers to the testimony of Harold Summers, a salesman for John Clay & Co., dealt with on page 26 of Appellants' brief. It is true this witness had on the day previous to his testimony sold, with another salesman, 18 or 19 loads of butcher stuff; but in answer to the question as to how many he could sell in a year, considering "the

days as they run throughout the year'' (R. Vol. I, p. 359) he answered:

> "Well, I may not be able to answer you correctly. If I did answer it, it would be only guess work'' (R. Vol. I, p. 364).

Next the Government refers to the testimony of Mr. Patterson, whom they characterize as a small operator having only one salesman besides himself. The witness is alleged to have said that if on the following Monday he received 10 loads of cattle, he could go out and sell them and not take on extra help. This witness stated (R. Vol. I, p. 382):

> "I could sell 10 (cars) a day on some dates and on other days you could not."

This witness' testimony epitomizes the conditions on the market. He stated (R. Vol. II, p. 377):

> "The amount that I could sell in a day would be guess work. The law of supply and demand, the price at which cattle are being offered, all are elements in the time taken to sell cattle. On different days different packers are looking for different types of cattle. On one day you might sell a certain type of cattle to one packer buyer and then on the next day he would not buy the same type of load at any price."

The next witness referred to by the Government is Mr. Brotzman. He is stated to have asserted that on a good market a steer salesman could sell 5 carloads a day. This assertion begs the question by the limitation "on a good market day." Furthermore, the Government ignores the rest of Mr. Brotzman's testimony. Without confining his answer to a "good market" day, the witness said:

> "I would not want to say how many cattle a man could sell in a day because so many things enter into the trade." (R. Vol. II, p. 857).

The witness Woods is referred to as testifying that on the preceding day his firm had received 17 loads of cattle which were sold by three salesmen. Taking this par-

ticular day and multiplying the performance of that day by the number of market days in a year is like saying that an automobile which can go one hundred miles an hour on an open highway can go at the same speed through traffic.

The testimony of Mr. Greene is upon the same basis—namely, what had been sold in a particular day on a particular market. It is only by taking isolated instances and assuming that such instances, when multiplied by the number of market days in the year which furnished a criterion for the performance of a year, that the Secretary is enabled to make the findings which he does make in respect to reasonable performance. The Secretary's findings are without evidence either statistical or by testimony. The statistical average is 392 cars per year per man, showing the fallacy of arriving at 1,000 cars of cattle and calves per year per man by multiplying a chosen performance of a chosen day.

We shall not lengthen this reply by referring specifically to the testimony relating to the selling performance for hogs and for sheep. The performance deemed reasonable by the Secretary for these species was arrived at in the same manner and by the same method—namely, by taking isolated statements of witnesses, assuming that the performances designated in those statements could be multiplied indefinitely and at any time, and by ignoring the complete testimony of such witnesses; and, in addition, ignoring the fact that the statistical evidence of what the hog and sheep salesmen actually did reveals that for hogs no single firm reached the prophetic achievement of 1,060 carloads per year, and that for sheep only two firms reached the Secretary's goal of 1,035 carloads.

In respect to sheep, the Government cites the example of John Clay & Co. and of Merrion & Wilkins. These are the two firms, and the only two, who reached the goal set by the Secretary.

When the performance required for each species is over two and one-half times the market average, something more fundamental must be found to support the performance demands of the Secretary than isolated and only partially quoted testimony.

V.

THE EVIDENCE DOES NOT SUPPORT THE SECRETARY'S FINDINGS AND ALLOWANCE FOR BUSINESS GETTING AND MAINTAINING.

In its summary of argument, point III, in respect to business getting and maintaining expenses, the Government asserts that the record contains abundant evidence of excessive and unreasonable expenditures for this purpose. To fully reply to all of the assertions in respect to the evidence found in the Government's brief under the head of business getting and maintaining expenses would require a brief of inordinate length. As in the case of performance of salesmen, the conclusions drawn by Government counsel are from isolated excerpts from the testimony and not from a digest of the entire testimony of any witness or all of the witnesses. The unwarranted conclusions drawn by the Government and stated in its brief put an undue burden upon the Court and opposing counsel in the sifting and winnowing of evidence. We refer to a few instances:

O. T. Henkle, Vice-President and General Manager of the Union Stock Yard and Transit Company, is quoted as stating that the size and general reputation of the Chicago market is a strong drawing factor throughout the country, and would obtain a considerable volume of business regardless of whether it or the market agencies advertise. The Secretary ignores the other statements of this witness (R. Vol. I., p. 304) as follows:

> "If a liberal allowance is not made for business getting and maintaining that business might go to a point

where some other solicitor or some other competitive point would have facilities or regulations where he could go out and get it. Where the business is lost to Chicago, the unit cost for that which remains would necessarily increase. The hog business reaching Chicago on a commission basis is dwindling and it is going East and some to interior packing points, causing a great reduction in the stock yards revenue as well as to commission men. If the Government were to reduce the allowance for business getting and maintaining from $4.50 per car to $1.50 to $2.00 per car, I believe the business would be further reduced, and create greater losses on the part of the commission men and the stock yards company."

The Government refers to the testimony of the witness Roy E. Murphy, a farmer engaged in raising live stock and patronizing the Chicago market. He is alleged to have stated, on page 809 of the record, that it is price and not advertising which brings business to the Chicago market. The sentiment of this witness, himself a shipper, is shown by his further testimony upon the same page (R. Vol. II., p. 809):

"As to whether I feel that I might be injured by any action on the part of the Government which would limit me in the right to receive that information, you cannot very well speak about the future to what extent it might injure you, but I know that I would miss it. I know that I would much prefer to go on with the information and that branch of the service with that added item than I would without it, and I absolutely feel that if that added to my cost of marketing not more than I am now paying that I would feel that it should not be restricted so far as I am concerned."

The witness John Swanson is referred to from page 408, Vol. II. of the record, as stating that it is service which maintains business. In the same sentence the witness said that solicitation brings new business. Further he said, page 409:

"We have to solicit business to retain some of our

old business as well as to get new business; and I do not think service alone sufficient to retain the old business, but it is a great factor."

The Government says that on page 408 of the record the witness talked about extravagant expenditures for advertising. The witness said no such thing anywhere in the record. Nor did any other witnesses except Mollin and Marshall, called by the Secretary to support his views.

Further in support of the allegation of extravagant expenses, the Government refers again to the testimony of the witness Murphy (R. Vol. II., p. 804). The testimony of the witness shows that as far as solicitation to him was concerned, there was anything but extravagance. He said:

"The commission men from the Chicago Stock Yards have been at my farm at various times and looked my cattle over, but the visits were as much of a social nature as they were commercial. They did not solicit my business at that time. They have never had to do that. There was one other firm that came there besides Rice Bros., but I cannot give you their name. * * * I should say that was approximately two years ago."

The Government draws the unwarranted conclusion that because the testimony of various witnesses shows that they are attempting to reduce expenses, that it therefore follows that expenses which have been incurred must have been extravagant.

The witness Swiney is alleged to have said that some market agencies spend more for traveling expenses than they should. What the witness said (R. Vol. II, p. 720) is:

"Some people naturally travel and spend more than they should. It has seemed so always, and others might spend more to pretty good advantage. That is largely a matter of opinion. And it may be that in the case where I believe that people spend more than they should, if I were apprised of all the facts and placed in their position, I might believe that the ex-

> penditure after all was warranted because I cannot know the circumstances which cause the other man to do the things which he does in that connection."

The Government fails entirely to support its promise in the summary of the argument that it will point out abundant evidence of excessive and unreasonable expenditures. The witness Bockman, testifying in respect to business getting and maintaining (R. Vol. II, p. 702), said:

> "We made no investigations to determine whether the amount so spent was proper or improper."

The Government says that that determination was made by the Secretary. The question is still open—on what evidence?

The situation with respect to business getting and maintaining expenses may be briefly summarized as follows: The witness Moll testified that there should not be covered into rates any expenses for this purpose except that necessary to keep the names of the market agencies before the public. The Secretary adopted this view, upon the testimony of this single witness, saying:

> "Respondents are entitled to use such means and methods as will enable them to keep their names before the public" (R. Vol. I., p. 162).

If the market agencies are entitled to spend only such sums as will keep their names before the public, the sending of circulars, calendars, and letters will suffice. The amount which the Secretary deems reasonable for this function permits only keeping names before the public. By the Secretary's own avowal the allowance would do away with the service to the shipper occasioned by trips to the country for advice and conferences, in many instances at the customer's request, and some times with such frequency that the requests cannot be met (R. Vol. II., p. 772).

Every owner or manager testifying on the question of business getting and maintenance, without exception, stated

that the expenditures made by them for this function were, in their judgment, as owners or managers, warranted and necessary.

VI.

NEITHER THE SECRETARY'S FINDINGS NOR THE GOVERNMENT'S BRIEF SHOWS HOW OR UPON WHAT THE SECRETARY BASES HIS "EXERCISE OF JUDGMENT."

Recognizing that the costs found reasonable by the Secretary are below actual costs, as shown by the Secretary's own figures, the Government justifies the allotments made for reasonable costs upon the basis that they are arrived at by the "exercise of judgment." Since the costs allowed as reasonable are less for every firm and for every species than actual costs, as shown in Section III herein, the exercise of judgment should be justified by something concrete and specific. One attempted answer of the Government is that experience of small volume firms having an average number of cars of cattle and calves per man of only slightly over 100 cannot be considered in determining reasonable costs because the volume is so small. To combat that answer, the appellants presented Petitioners' Exhibit 10 (R. Vol. I, p. 295). In this exhibit all of the firms selling less than 200 cars of livestock unless they handled more than 100 cars of the most valuable livestock, cattle, were eliminated. The Exhibit gives the number of each species of livestock handled by each firm for the year 1932. The four right-hand columns of the Exhibit show the allotments of the business of the small firms, as defined in the Exhibit, to the large firms in the proportion which the volume of each of the large firms bears to the total volume of the market. The elimination of the small firms entirely shows that there would be little or no effect upon the cost or business of the remaining firms.

Again, the Government says that the actual costs incurred do not furnish a proper standard of costs but must be adjusted and corrected to eliminate, as far as possible, those factors which in the past made costs unreasonable. It is the exercise of judgment, it is said, by which the alleged past unreasonable costs have been eliminated. But what costs were unreasonable? Are not the market agencies entitled to know? Is the mere fiat of the Secretary that a cost above a certain amount is unreasonable, a sufficient answer when unit costs for every firm, for every species, are above the amount deemed reasonable? And this excess of unit costs actually incurred over costs held reasonable, is from the Secretary's own figures (Government Exhibit 49). If some, or a portion, or many of the firms had costs below the amounts deemed reasonable by the Secretary, some basis might be apparent, but all of the firms exceed the Secretary's costs per head.

The Government says that in prescribing reasonable rates, it is necessary for the Secretary to estimate the costs upon which those rates are to be founded and in doing this it is necessary that he determine costs which are reasonable. In explanation of how this is done, the Government says:

> "The Government found the actual functional unit cost of each market agency by a detailed audit and examination of its business. He then proceeded on the basis of all the information before him to determine the reasonable unit costs for each function performed by appellants."

The finding of "the actual functional unit cost" was of no purpose and served no useful end if the Secretary in determining what was reasonable "by the exercise of judgment," could entirely disregard unit costs found by him.

From the whole record it is apparent that what the Secretary has ordered as reasonable costs and reasonable per-

formance is merely a prophetic goal postulated upon conditions which do not exist in the regulated business. Finding a total unit per head cost lower than that achieved by any firm upon his own figures, the Secretary is in effect saying that every firm at the Chicago market is inefficient or extravagant. And this without any support in evidence of inefficiency or wastefulness. The requirement per salesman exceeds the accomplishment of the hog salesmen of all firms; exceeds the achievement of all sheep salesmen except for two firms; and exceeds the achievement of all cattle salesmen except for two firms.

When the exercise of judgment departs so far from actualities that only in very rare instances are the demands for reasonable costs and reasonable performance met, that exercise of judgment has departed from the evidence and is not supported by it. Indeed, the Government admits that the findings of the Secretary depart from fact, actuality, and experience, because it is stated that the appellants have the burden of proving that the rates which the Secretary has prescribed "are so arbitrary, capricious, and unreasonable that he (the Secretary) has exceeded his statutory authority." Are there degrees of unreasonableness which prompts the Government to use the word "so"?

The use of that expression on the part of the Government was not accidental, for it is repeated in the brief, the Government stating that "the ultimate question is whether the Secretary in prescribing the rates has acted so arbitrarily, capriciously and unreasonably that he has exceeded his statutory authority." If the Secretary acted unreasonably at all, or in any degree, he exceeded his authority. He must confine himself to the evidence. He was entirely unreasonable, capricious and arbitrary in allowing as costs sums which he, himself, found were exceeded by every agency at the market. The Secretary might have condemned the expenses of one or of several market agencies. He cannot condemn the expenditures of all of them.

There must be, among the hundred or more firms doing business at Chicago, one who conducts its business efficiently and with reasonable expense. The Secretary's order was a condemnation of the entire market. And the only justification for this condemnation is the expression "the exercise of judgment."

VII.

Confiscation.

Upon the issue of confiscation, the Appellants stand upon their original brief. Allegations and proofs were made in respect to each appellant.

The lack of necessity for further argument on confiscation is demonstrated by the statement in the Government's brief that "a large number of firms have operated at a loss under the present rates, thus indicating that the costs of these firms are excessive."

There are two points in respect to this statement: First, the absurdity that because a business loses money, its costs are too high; and second, the admission of losses under the present rates. The Secretary would reduce income still more.

The Government lays great stress upon the irrelevant fact that the Secretary's rates yield with some excess an amount greater than the costs found reasonable by the Secretary. The appellants make no contention otherwise and specifically so stated in their principal brief. To argue this point, upon which the Government devotes the entire second section of its brief, is to beg the entire question in this case.

Respectfully submitted,

Geo. I. Haight,
John S. Boyd,
M. K. Hobbs.

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No. 655

In the Supreme Court of the United States

OCTOBER TERM, 1935

C. H. ACKER, DOING BUSINESS AS C. H. ACKER & COMPANY, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE APPELLEES

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OPINION BELOW

The opinion of the District Court of the United States for the Northern District of Illinois (R. 1162–1170) is reported in 12 F. Supp. 776.

JURISDICTION

The decree of the District Court was entered on March 19, 1935 (R. 1171). Petition for appeal was filed on April 18, 1935 (R. 1172–1173), and was allowed on the same day (R. 1173–1174).

The jurisdiction of this Court is derived from Section 316 of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 168 (U. S. C., Tit. 7, Sec. 217), which provides that:

> * * * the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title.

Judicial review of the orders of the Interstate Commerce Commission was originally provided for by Section 1 of the Act of June 18, 1910, c. 309, 36 Stat. 539, commonly known as the Commerce Court Act, which conferred jurisdiction upon the Commerce Court over "Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." The Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219 (U. S. C., Tit. 28, Secs. 41 (28), 47), transferred the jurisdiction of the Commerce Court to the several District Courts of the United States, and provided that all suits to suspend or set aside an order of the Interstate Commerce Commission should be heard by three judges. Provision was made by the said Urgent Deficiencies Act for direct appeal to this Court (U. S. C., Tit. 28, Secs. 47, 345 (4)).

QUESTIONS PRESENTED

I. QUESTIONS RELATING TO THE METHOD USED BY THE SECRETARY IN FIXING THE PRESCRIBED RATES

A. Whether the Secretary in fixing the rates prescribed for the appellant livestock commission firms employed the method of rate determination approved by this Court in *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420.

B. Whether the Secretary should have employed a well recognized statistical method in the determination of the reasonable functional unit costs upon which the prescribed rates are based.

C. Whether the Secretary in determining the reasonable functional unit costs upon which the prescribed rates were based improperly invaded the field of management.

D. Whether the Secretary used a proper test period for the purpose of determining reasonable functional unit costs.

II. QUESTIONS WITH RESPECT TO WHETHER THE EVIDENCE BEFORE THE SECRETARY WAS SUFFICIENT TO SUPPORT HIS FINDINGS

A. Whether the Secretary in determining the reasonable functional unit costs of the service furnished by the appellants made a reasonable allowance for salesmanship costs.

B. Whether the Secretary made a reasonable allowance for the cost of getting and maintaining business.

C. Whether the Secretary made adequate provision for the function of the entrepreneur.

III. MISCELLANEOUS QUESTIONS

A. Whether the appellants by their pleadings and proof have raised the question of confiscation.

B. Whether the Secretary properly denied the appellants' petitions for rehearing.

STATUTE INVOLVED

The relevant portions of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 168, are set forth in Appendix A, pp. 131–133, *infra*.

STATEMENT

This is an appeal from a decree of a statutory three-judge court for the Northern District of Illinois entered on March 19, 1935 (R. 1171). The decree dismissed a suit instituted by appellants to enjoin the respondents from enforcing an order of the Secretary of Agriculture dated January 8, 1934 (R. 188–189), and a supplemental order dated March 12, 1934 (R. 189–195), fixing the maximum rates chargeable by market agencies for the selling and buying of livestock at the Union Stockyards in Chicago, Illinois.

On September 23, 1932, the then acting Secretary of Agriculture, acting pursuant to the provisions of the Packers and Stockyards Act, 1921 (42 Stat. 159) entered an order of inquiry and notice of hearing against the market agencies engaged in the selling and buying of livestock at the Union Stockyards in Chicago, Illinois. The object of the inquiry was to determine the reasonableness of the

rates charged by such market agencies (R. 8). A hearing was held before an examiner beginning in Chicago, Illinois, on May 15, 1933, and continuing until August 18, 1933 (R. 8). The hearing was resumed in Washington on October 20, 1933, and continued until October 24, 1933, resumed again on November 3, 1933, and finally adjourned on November 7, 1933 (R. 69–70). Oral argument was had on December 13, 1933, before the Secretary (R. 9). On January 8, 1934, the Secretary issued his findings of fact, conclusion, and order (R. 62–189). The Secretary found that the existing schedule of rates contained charges which were unreasonable and discriminatory, and prescribed a new schedule of reasonable rates which was to become effective 30 days thereafter (R. 185–189). The effective date of this order was postponed to March 9, 1934, by an order of the Secretary dated January 23, 1934 (R. 190).

On February 7, 1934, appellants, who are market agencies operating in the Union Stockyards at Chicago, filed a petition for rehearing alleging that by reason of altered economic circumstances the rates prescribed by the Secretary would not produce sufficient revenue to defray their operating expenses (R. 9). The petition was denied on March 12, 1934 (R. 9). On the same date the Secretary promulgated a supplemental order (R. 189–195) which modified the order of January 8, 1934, by prescribing a schedule of rates higher in

numerous instances than those prescribed in the earlier order (R. 191–194). The effective date of the supplemental order was deferred by successive orders of the Secretary until April 20, 1934 (R. 10).

On April 9, 1934, appellants filed an amended petition for rehearing in which the same objection which had been made to the original order was asserted with reference to the supplemental order (R. 10). The amended petition was denied on April 12, 1934 (R. 10).

Thereafter, appellants on April 18, 1934, filed a petition in the District Court for the Northern District of Illinois, naming as defendants the United States, the Secretary of Agriculture, and the United States Attorney for that District (R. 1–29).[1] By the petition and complaint appellants sought to restrain the enforcement of the original and supplemental orders of the Secretary (R. 28–29) upon the ground that the rates prescribed therein were unreasonable and confiscatory (R. 13–26). The specific objections asserted with reference to the prescribed rates are too numerous to be set forth in this statement and are treated in detail in the argumentative portion of this brief.

On April 19, 1934, the District Court entered an interlocutory injunction restraining the enforce-

[1] It is erroneously stated on page 5 of the record that the petition and complaint were filed on January 31, 1935. The correct date is given in the opinion of the District Court (R. 1164).

ment of the orders of the Secretary upon condition that appellants deposit monthly in the Court the amount by which the rates collected under the existing schedule exceeded the amount which would have been collected under the rates prescribed by the orders of the Secretary (R. 195–197).

The case was heard on application for a permanent injunction on June 11, 1934 (R. 211). Appellants offered in evidence the record of the proceedings before the Secretary. In addition, the court received, over the objection of the government, the testimony of appellants' accountant and certain exhibits which he had prepared (R. 211–212).

On February 1, 1935, the court handed down its opinion (R. 1162–1170) and findings of fact and conclusions of law [2] (R. 1161–1162) and on March 19, 1935, entered a decree dismissing the petition, but continuing in effect the interlocutory injunction pending an appeal (R. 1171–1172). The court found that the findings of fact made by the Secretary were supported by substantial evidence and upon an independent consideration of the evidence received by the Secretary and of the evidence received by the court, adopted those findings as its own (R. 1161).[3] It concluded that as a matter of

[2] The opinion of the Court was dated February 1, 1934; the findings of fact and conclusions of law were dated December 31, 1934.

[3] Judge Wilkerson wrote a separate opinion in which he stated that he did not concur in the findings of the court which adopted *in toto* the findings of fact made by the

law the rates prescribed by the Secretary are reasonable and not arbitrary and that they do not take the property of appellants without due process of law in violation of the Fifth Amendment (R. 1161–1162).

Appellants' petition for appeal was allowed on April 18, 1935 (R. 1173–1174).

INTRODUCTION AND SUMMARY OF ARGUMENT

Appellants are attacking a schedule of maximum rates prescribed by the Secretary of Agriculture for the personal services rendered by them as market agencies in buying and selling livestock on commission at the Chicago stockyards. The schedule attacked was ordered, after full hearing, pursuant to the provisions of the Packers and Stockyards Act.

The schedule provided material reductions in the maximum commission rates chargeable by appellants for the personal services which they render. The exact extent of the reduction is difficult to measure because the structure of the schedule prescribed differs from the structure of the tariff in effect prior to the order. The old tariff provided maximum and minimum carload rates for arrivals of all species of livestock. The prescribed schedule provides rates which vary according to the weight of the animals in each consignment for each

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Secretary of Agriculture, but that he thought there was evidence to support the findings and that he therefore joined in the entry of the decree dismissing the bill (R. 1170).

species (except sheep), and which are graduated according to the size of the consignment.[4] The percentage of reduction brought about by the prescribed rates in any given year would therefore depend upon the size of the consignments arriving at the market and the weight of the livestock in each such consignment. Appellants claim that as applied to the business of four months in 1934 the prescribed rates would have reduced gross aggregate commissions approximately 20%.

In prescribing a schedule of maximum reasonable rates, the Secretary first determined reasonable unit costs (using a head of livestock as a unit) for each function performed by appellants in the handling of livestock. He then made findings as to a reasonable unit profit. On the basis of these findings, a schedule of maximum rates was prescribed sufficient to cover both the unit costs and the unit profits found by the Secretary to be reasonable and to provide a substantial margin over and above these unit costs and profits.

Appellants have stipulated that the schedule of maximum rates prescribed by the Secretary, if ap-

[4] The weight variations and size of consignment gradations employed by the Secretary in the orders challenged herein have apparently been accepted by appellants as a fair tariff structure inasmuch as the tariff which they submitted to the Secretary for filing on October 19, 1935 (which tariff is involved in the case of *United States* v. *J. M. Corrick, et al.*, No. 656), embodies the same variations and gradations.

plied to the business of all appellants in the test year of 1932, would have produced $493,941 in excess of the costs and profits found by the Secretary to be reasonable (R. 1179). This stipulation eliminates from the case any question as to the adequacy of the prescribed rates to yield the costs and profits found by the Secretary to be reasonable. Not only are those costs and profits covered, but a margin of almost half a million dollars over and above the reasonable costs and profits would have been yielded in the test year.

Appellants, however, challenge the reasonable costs found by the Secretary on the ground that they do not approximate the average costs actually incurred by appellants; and they attack the reasonableness of the rates prescribed by the Secretary on the ground that the revenue produced by the rates would not cover costs actually incurred and provide a profit.

The government submits that in the case of a business like that here involved, as distinguished from the usual type of utility, the lawfulness of prescribed rates cannot be determined by whether they are adequate to cover the actual costs incurred as the business has been carried on in the past, and yield a profit besides. Many of appellants, as will later be shown, conduct their business under such circumstances that they could not possibly make their actual costs and a profit under any schedule of reasonable rates, because the conditions

under which the business is carried on tend to increase the actual competitive costs beyond all reasonable bounds. Obviously, reasonable rates cannot be predicated upon unreasonable costs. The duty of the Secretary under the Act is to prescribe reasonable rates and the execution of this duty, therefore, involves a determination of what costs are reasonable as distinguished from what costs have actually been incurred. The past actual costs incurred by appellants do not, therefore, in and of themselves furnish a proper standard of costs, but must be adjusted and corrected to eliminate so far as possible those factors which have in the past made costs unreasonable.

Much of appellants' case rests upon the reiterated assertion that the Secretary has no power to manage appellants' businesses and that in finding reasonable costs he is attempting to assert such a power. This is a misstatement of what the Secretary has done. He does not assert any authority to prescribe or limit any of appellants' expenditures, but in prescribing reasonable rates it is necessary for him to estimate the costs upon which those rates are to be founded, and in doing this it is necessary that he determine costs which are reasonable. Appellants are in no way prevented thereby from incurring unreasonable costs. They are merely prevented from making the consumer defray those unreasonable costs.

There is nothing obscure or novel about the method of rate making applied in this case. It was considered by this Court in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, and the Secretary has used it in prescribing maximum rates for market agencies at Denver, Kansas City, Sioux City, Fort Worth, East St. Louis, Ogden, and Salt Lake City.[5] A comparison of the order litigated in the *Tagg Bros. & Moorhead* case with the order in the instant case reveals not only that the rate-making method employed in the two orders is the same but also that the rates here prescribed provide a larger margin of profit than did the rates prescribed by the order in the *Tagg Bros. & Moorhead* case (see Appendix B, *infra,* pp. 134–135). In this connection it should be observed that in the order involved in the *Tagg Bros. & Moorhead* case, no specific finding was made as to a reasonable unit profit (*Tagg Bros. & Moorhead* v. *United States,* R. 23–42), whereas in the order

[5] The rate orders involving market agencies at Denver and Kansas City are being contested. An appeal from a decree of a three judge District Court in the Western District of Missouri upholding the order prescribing rates for the Kansas City market agencies is pending in this Court. *Morgan* v. *United States*, No. 686. An appeal to this Court has been allowed from a decree of a three judge District Court in the District of Colorado upholding the Secretary's order prescribing maximum rates for the Denver market agencies. *American Commission Co.* v. *United States*, 11 F. Supp. 965. The Denver appeal has not yet been docketed in this Court.

attacked in the instant case the Secretary has specifically considered and made an allowance for profit.

One further matter should be noted. The findings of fact on which the Secretary based his order were made after lengthy hearings and after a thorough and detailed examination of the business of appellants. They were adopted *in toto* by the District Court after a trial *de novo* which involved an *independent consideration* both of the evidence before the Secretary and of new evidence produced by appellants in court.

Appellees' argument may be further summarized as follows:

I

The rates prescribed by the Secretary were determined by a lawful method. The Secretary found the actual functional unit costs of each market agency by a detailed audit and examination of its business. He then proceeded on the basis of all the information before him to determine the reasonable unit costs for each function performed by appellants. In addition he made an allowance for reasonable profit. On the basis of these findings the Secretary prescribed rates adequate to cover the costs and profits found to be reasonable together with a margin over and above those costs and profits. This is the same method of rate making which was used in the order upheld by this Court in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420. Appellants' objections to this

method of rate making are not sound. The statistical methods suggested by appellants as an alternative would not furnish sound criteria of reasonable costs. The test period used by the Secretary in determining reasonable costs was adequate. The determination of reasonable costs by the Secretary does not unlawfully invade the field of management.

II

The prescribed rates admittedly would have yielded in 1932 a margin of $493,491 over and above the costs and profits found by the Secretary to be reasonable.

III

The findings made by the Secretary are fully supported by the evidence. The record furnishes ample support for the Secretary's findings as to reasonable salesmanship costs. Appellants' attack on the salary figures used by the Secretary to determine reasonable costs is based on costs improperly padded by the inclusion of excessive appraised values for the services of the owners. The record contains abundant evidence of excessive and unreasonable expenditures for the purpose of getting and maintaining business and the Secretary's findings as to reasonable unit costs for those functions are fully supported by the facts. The record also furnishes ample support for the findings of the Secretary with respect to reasonable profits.

IV

The rates fixed by the Secretary are not confiscatory or unreasonable. The rates prescribed govern the charges which appellants may make for the personal services which they render. The amount of capital required for the business is small, and there is no dispute in this case as to the capital on which return has been allowed or the rate of that return. The rates prescribed by the Secretary cannot be confiscatory in the same sense in which rates might be which fix a return on physical property and capital. Appellants have no constitutional right to rates high enough to maintain all of them in business and to assure all of them a profit regardless of the economy and efficiency of their operation or the reasonable value of the services which they perform. Appellants have the burden of proving that the rates which the Secretary has prescribed are so arbitrary, capricious, and unreasonable that he has exceeded his statutory authority. Appellants have failed to sustain this burden.

V.

The Secretary properly denied the two petitions for rehearing which appellants filed with the Secretary. These petitions related to alleged changed economic conditions, but they were presented within two months and five months, respectively, after the close of the hearing before the Secretary. They did not contain allegations of any facts which could

not have been offered at the hearing before the Secretary, except those relating to business conditions at the stockyards during the comparatively short time which had elapsed since the record was closed. No sweeping economic changes had occurred during that period. The denial of the petitions for rehearing, therefore, did not constitute an abuse of discretion.

ARGUMENT

I

THE RATES PRESCRIBED BY THE SECRETARY WERE DETERMINED BY A LAWFUL METHOD

A. *The rates are designed to yield the reasonable costs of conducting business and a reasonable profit*

Section 305 of the Packers and Stockyards Act provides that all rates or charges made for stockyard services furnished by market agencies shall be just, reasonable, and non-discriminatory. Under Section 310 of the Act the Secretary of Agriculture is charged with the duty of investigating the reasonableness of charges made by market agencies and is authorized to determine and prescribe just and reasonable rates and charges. In the discharge of these duties the Secretary of Agriculture initiated proceedings to determine the reasonableness of the rates charged by the market agencies operating the Union Stockyards of Chicago and at the conclusion of those proceedings fixed the rates which are now attacked by appellants.

In paragraph 103 of his findings the Secretary of Agriculture has clearly stated the principle of rate making which he applied (R. 128):

> A method has been adopted in other commission rate determinations by the Secretary of Agriculture, pursuant to the terms of the Packers and Stockyards Act, and that method was approved by the Supreme Court of the United States in the case of *Tagg Brothers and Moorhead, et al.*, versus *United States* (280 U. S. 420). In that case, which is known as the *Omaha Commission Rate Case*, it was decided that the rates charged by a group of market agencies at a market for selling and/or buying livestock on a commission basis should produce gross revenues sufficient to pay all reasonable costs and a reasonable compensation for management and risk, that is, a reasonable profit, to owner or owners of all firms which receive enough livestock to enable them to handle their business in a reasonably efficient and economic manner. That principle is adopted as a guide in this proceeding, and it becomes necessary therefore to determine the reasonable costs to the respondents of handling each species of livestock.

The application of this principle by the Secretary in the instant case involved two steps:

1. THE DETERMINATION OF THE ACTUAL FUNCTIONAL UNIT COSTS OF EACH MARKET AGENCY

The material for this determination was largely furnished by an audit of the business of each mar-

ket agency in the years 1931 and 1932, made for the Secretary by government accountants. This audit is described in Paragraph 108 of the Secretary's findings (R. 131–132). It included an analysis of payrolls by individuals and functions for both years and a detailed study of the method used by appellants in buying and selling livestock and of the volume of business which they transacted. Compilations were also made of monthly variation of volume by firms and for the market as a whole, the varying number of head per consignment by firms for a 10-month period for 1932 and the varying number of head per draft [6] for each firm for two months of 1932.[7]

In addition to the audit, evidence was introduced at the hearing before the examiner showing the volume of livestock received at Chicago for all years from 1865 to 1932, the monthly receipts on the market for the years 1923 to 1932, the daily receipts for the year 1932, the shipments direct to packers for the years 1923 to 1932, and the through

[6] A draft is all those animals in one consignment weighed as a single sales or purchase classification.

[7] The audits were accepted by appellants as constituting a true reflection of the facts disclosed by their books and records for the period covered (R. 132), although they contended that the item of owners' salaries as shown by the books was not a true reflection of the worth of the services of these owners. See the discussion of this point at pp. 73–75, 102, *infra*. An accountant employed by appellants made a study for the purpose of determining costs and his determinations of functional unit costs differed somewhat from similar determinations made by the government accountants.

shipments for the same period (Resp. Ex. 12, Schedule 19–21).

On the basis of the audit and other statistics there was prepared a functional unit analysis of the operations of each firm for 1932 which (a) allocated to each species of livestock the income and costs which could be directly ascribed to it, and (b) further allocated income and costs to the various modes of arrival within a species (Gov. Ex. 49). In making this analysis, expenses were classified in three categories—salaries, other expenses, and interest. Salary expenses were further classified as selling and buying, yarding, business getting and maintaining, office and administrative (R. 133). Other expenses were further classified as yarding, office, business getting and maintaining, administrative and general, and risk (R. 133). Interest was calculated on the sound value of the fixed assets and on the inventory of supplies and the cash working capital equivalent to one month's expense allowance (R. 133). In paragraph 110 of his findings the Secretary explained that the year 1932 was used for this analysis because it was the year "next preceding the one in which the hearing was held." He also stated that receipts for the year 1932 were lower than they had been for a number of prior years and that a schedule of rates adequate to produce reasonable costs and reasonable profits in a low volume year should not prove to be too low in those years in which an increase in volume occurs (R. 133).

Having determined the actual functional unit costs incurred by each market agency in 1932, the Secretary proceeded to determine reasonable unit costs for each of the classifications of expense referred to above. These reasonable costs were determined by the exercise of judgment by the Secretary upon all the facts of record, including the unit costs incurred by each market agency. In making this determination the Secretary did not attempt to determine reasonable costs on the basis of an average cost derived from the application of any rigid mathematical method. If the Secretary had adhered to any mathematical average he would have violated the principle of rate making which he had laid down for his own guidance, that is, the determination of the unit costs which are reasonable for a market agency which receives a sufficient volume to permit its operation in a reasonably efficient and economic manner.[8] This is not to say that the Secretary ignored the actual experience of commission firms as to costs. It does mean that he exercised his informed judgment as to costs which should be regarded as reasonable and that he did not accept a cost figure as reasonable merely because it conformed to an average. To this exercise

[8] See the remarks of the District Court in *Tagg Brothers & Moorhead* v. *United States*, 29 F (2d) 750, 755, quoted at pp. 31–34, *infra*.

of judgment by the Secretary appellants strenuously object despite the fact that it was by the exercise of such judgment that the rates were fixed which were upheld by this Court in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420.

There is no mystery in the reasoning by which the Secretary determined reasonable costs. In his findings of fact he set out at length the evidence with respect to each function and the considerations which influenced his determination of the reasonable cost for that function.[9] At the conclusion of his examination of each of the classifications of expense the Secretary found a reasonable unit cost for each such classification and those costs are listed in paragraph 158 of his findings (R. 180) and in Appendix C of this brief, p. 136; *infra.*

Not only did the Secretary determine reasonable unit cost for the performance of each function, but in adddition he made a finding as to a reasonable allowance for profits to be covered into rates. This was done by determining the amounts which might reasonably be allowed per unit for management and uninsurable risks, which were classified as profits. This allowance per unit for profits was then added to the total of the functional unit costs previously determined. It was this total that was

[9] For example, salesmanship (Par. 120–134; R. 139–150), yarding (Par. 135–136; R. 150–154), office salaries and expenses (Par. 137–138; R. 154–160), business getting and maintaining expenses (Par. 139–145; R. 160–167), administrative and general expenses (Par. 146; R. 167–169), insurance and interest (Par. 147–148; R. 169–178).

used by the Secretary in connection with the determination of the unreasonableness of the existing rates and the preparation of a schedule of maximum reasonable rates (paragraphs 154–157 of the Secretary's findings, R. 178–180). The allowances for profit are also listed in Appendix C, p. 136, *infra*.

B. *The method used by the secretary in prescribing rates is the same as that which was approved by this court in Tagg Bros. & Moorhead* v. *United States*

In the order upheld by this Court in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, the Secretary applied the same principles of rate making which he used in determining upon the maximum rates now attacked by appellants. This is clearly demonstrated by the portions of the opinion of the District Court in *Tagg Bros. & Moorhead* v. *United States,* 29 F. (2d) 750, in which the rate-making principle was discussed. The court said (p. 753):

> * * * it falls to the Secretary, under the Packers and Stockyards Act, to consider what rate is high enough to compensate the efficient, low enough to restrain destructive scrambles for the business among too many agencies, and within the margin of the value of the service to the shippers, and on the whole case to fix reasonable rates, just to all; a most delicate function obviously, but, if necessary, possible.

And the District Court summarized the method used by the Secretary, as follows:

> (p. 753) * * * He accorded the parties in interest a hearing, and from oral evidence and extensive audits of each and all of the marketing agencies concerned the Secretary undoubtedly had data before him sufficient to build up a rate schedule. He had disclosed to him each and all of the details and items of expense that go to the performance of the function; he found a maximum reasonably chargeable for each detail, and, adding them together, he fixed a maximum charge for the whole service.
>
> (pp. 754–755) * * * There is no uncertainty about how the Secretary came to use the per car limit for selling as a cost item in service in arriving at the rates in his schedule. It was shown to the Secretary that some of the men who do this selling on the market sell a great many cattle, and some sell very few. Some are working for high wages, and some for much lower, and others again, as owners of the business, charge all there is left in the business, after paying expenses, to this selling job performed by themselves.
>
> The Secretary was not concerned with nor attempting to say just what a cattle salesman should be paid. It was his task to find a maximum per car for this work, beyond which anything charged would be unreasonable. To that end he considered how many cars a man could sell in a day, if he had the cars to sell, and also how many cars the men

> engaged actually do sell in the course of the business. From the whole the Secretary concluded that good cattle and sheep salesmen were being paid salaries of $5,000, and hog salesmen $4,000, and that any good cattle and sheep salesman can readily sell 1,000 cars of cattle or sheep in a year, if he has that many to sell, any good hog salesman could easily sell 1,333 cars of hogs in a year. There was in fact uncontradicted proof that each could sell many more cars. * * * The Secretary has not acted, then, on any mere theoretical estimation, but on actual experience as disclosed by the evidence. He finds from the evidence before him that the work can be done within the cost he has fixed as a maximum because it is being done.
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> * * * * *
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> The Secretary found a maximum for the other items of costs of carrying on the market agencies in substantially the same way that he arrived at the salesman cost. He refused to be bound by either the lowest cost he found or by the highest, or by any mathematical average. He found the cost which he deemed normal and reasonable, well below the highest and well above the lowest. As to each item there is proof that some agencies are getting the thing done in actual operation well within the maximum fixed.

Appellants attempt to distinguish the situation in the *Tagg Bros.* case from the instant case on two grounds. They first suggest that since the decision of *Tagg Bros. & Moorhead* v. *United States*

there has been a rapid change from rail to truck receipts and that livestock now arrives at the markets in smaller and more mixed lots. Appellants contend that these circumstances increase the number of sales required to dispose of a given number of cattle with a consequent increase in selling costs, and that the Secretary's order fails to take these changed circumstances into account (appellants' brief, pp. 48, 50). The mere fact that market conditions may have changed does not prove that the Secretary has here used a different rate-making method than he employed in the *Tagg Bros.* case. The only question raised by the difference in conditions is whether the Secretary's application of the method has made sufficient allowance for the change. Paragraphs 106, pp. 163–165 of the Secretary's findings (R. 130, 183–184) show that he took into account changes in market conditions. Unlike the tariff in the *Tagg Bros.* case, which used the carlot as the rate unit, the rates which the Secretary has prescribed here are based upon the consignment as a unit and provide for appropriate graduations in the charges according to the number and weight of animals in the consignment.[10]

[10] A consignment, for the purpose of assessing selling charges, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day. A consignment, for the purpose of assessing buying charges, is all the livestock of one species bought at any time but shipped or delivered to one person on one market day (R. 191–192).

It is shown on pages 42–45, *infra*, that these graduated charges made adequate provision for the changed circumstances to which appellants refer.

In the second place, appellants attempt to distinguish the situation in *Tagg Bros. & Moorhead* v. *United States* on the ground that the salesmanship costs there found to be reasonable had a closer relationship to the actual salesmanship costs than do the salesmanship costs found to be reasonable here. In making this argument appellants contrast the salesmanship costs found to be reasonable by the Secretary in this case with what they allege to be actual salesmanship costs. In every instance in which this contrast is made, the actual costs claimed by appellants have been improperly padded by a hypothetical item representing the so-called appraised value of owners' services.[11] These appraisals were made by a committee appointed by appellants. The appraisals, which represent the

[11] Examples of cost figures used, which include these hypothetical appraisals, occur in the following places in appellants' brief: The table on page 40 of appellants' brief which states that the average salary for cattle and calf salesmen is $5,608.08 and that the salesman's salary per head on cattle and calves is $.4024; the statement on page 80 that the average cost of salesman's salary per head for cattle and calves is $.4024; the statement on page 82 that cattle salesmen on the average receive $1,108.08 more than the figure, $4,500, which the Secretary associated with the sale of 1,000 carlots of cattle; the statement on page 86 that $4,500 is $1,108 less than the average salary for cattle salesmen; the statement on page 92 that the average salary for sheep salesmen is $4,451.13 and for a hog salesman $4,183.93.

values which the committee placed on the owners' services, are excessive, and bear no relation whatsoever to the reasonable value of those services or to any amounts which the owners were actually paid. In many cases the appraisals are more than double the amounts actually drawn from the businesses by the owners. The appraisals do not represent actual expenses incurred by appellants. They are hypothetical expenses and cannot properly be included in any computations with respect to costs. No such padding of costs was attempted by the market agencies in the *Tagg Bros.* case.

In any event the alleged contrast between the costs in the *Tagg Bros.* case and those found here has little significance. Conditions in the two markets are doubtless different in certain respects and this difference affects costs. It cannot be assumed that there is the same relationship between reasonable costs and actual costs in the Chicago market as obtained in the *Tagg Bros.* case. More significant than any comparison of costs is the fact that the rates here fixed by the Secretary provide a larger return than did the rates fixed by the Secretary in the *Tagg Bros.* case. Appendix B shows that the rates fixed by the Secretary here as applied to the aggregate business of all of appellants in the test year of 1932 would have produced a profit of $1.05 per car in excess of the profit produced by the application of the rates fixed in the *Tagg Bros.* case to the aggregate business enjoyed by all of the market agencies in that case in the test year of 1925.

Appellants also suggest that although the Secretary has here applied the method used in the *Pagg Bros.* case in determining yarding and office expenses, he has departed from that method in determining reasonable costs of salesmanship (appellants brief, pp. 92–95). This alleged difference in method is deduced from the fact that the costs found to be reasonable for yarding and office expenses more nearly approximate the costs claimed by appellants to have been actually incurred than do the reasonable salesmanship costs found by the Secretary. The Secretary did not use one method for determining the reasonable costs of salesmanship and another method for determining reasonable yarding and office expenses. The argument that he did so rests upon the unsound assumption that because the salesmanship costs found to be reasonable by the Secretary and the costs he found to be reasonable for yarding and office expenses do not bear exactly the same relation to the average cost claimed to have been incurred by appellant for those functions, the two reasonable cost figures must necessarily have been determined by different methods. The reason why the costs found reasonable for yarding and office expenses bear a close relationship to actual expenses is not because a different method was used but because competitive conditions tend to maintain those costs at a reasonable level. The difference between the cost of yarding and office

expenses and salesmanship in this respect was pointed out by the Secretary in his findings in these words:

> In general, the expenses incurred by respondent firms fall into two classes. (1) There are those expenses which the conditions of the business tend to hold down. In this class are those expenses incurred for the performance of functions such as yarding and office work in which the persons employed are retained for the particular work to be performed and not for the amount of business which they may draw to the firm. (2) The second class of expenses is that in which the factor of control of business tends to increase the expenses of doing business. In this class are such expenses as those of salesmanship, and business getting and maintaining (R. 139).

It may be true that the costs found by the Secretary to be reasonable for yarding and office expenses are closer to the average costs claimed to have been incurred by appellants for these functions than are the reasonable salesmanship costs found by the Secretary to the actual salesmanship costs claimed to have been incurred by the appellants. This circumstance does not prove that the Secretary used a different method in determining the two cost items. It demonstrates merely that the actual expenses incurred by appellants for yarding and office expense more nearly approach

the standard of reasonableness than do the average expenses which they claim to have incurred for salesmanship.

C. *The statistical methods suggested by appellants would not furnish sound criteria of reasonable costs*

Appellants object that the Secretary in determining reasonable costs did not follow any "well known or well recognized experience method" (appellants' brief, pp. 79–92). Appellants disclaim advocacy of any particular experience method of determining costs, but they insist that the cost determined to be reasonable "should have some relationship to experience" (appellants' brief, p. 79). Analysis of appellants' argument on this point discloses that the substance of their contention is that the Secretary should determine reasonable costs by the mechanical application of some mathematical or statistical method, which would result in the derivation of an average cost or something closely analagous thereto.[12]

[12] Thus, at pages 87–89, appellants make a comparison of the costs found reasonable by the Secretary with costs found by the market median, the weighted average, and the 66⅔% bulk line methods. Each of these methods results in the derivation of an average cost or something closely analogous thereto. The median method takes the unit cost for that firm above which there are as many firms with lower costs as there are firms below with higher costs. The weighted average method takes an average unit cost weighted by volume of business. The 66⅔ percent bulk line method selects the highest unit costs incurred by any of those firms which do 66⅔ percent of the total business of the market at the lowest unit costs.

This contention is untenable. It was made in *Tagg Bros. and Moorhead* v. *United States,* 280 U. S. 420, and rejected by the courts. Indeed, the District Court in that case not only rejected the contention but pointed out why the use of averages by the Secretary would be improper. The court said (p. 754):

> Under these conditions, the Secretary declined to adopt averages of actual cost to the different agencies, and set before himself the task of finding the normal and reasonable cost per car of rendering the service for each species, cattle, hogs, and sheep. Then, itemizing the out-of-pocket cost apportioned on a per car basis for each species, he said that in each instance the figure adopted was "a normal of the actual cost of the particular item to those firms whose financial condition exhibits ordinary efficient management in their business."

There as here it was contended that the costs allowed were lower than the costs actually incurred, that the Secretary's order allowed no margin of profit, and that many of the market agencies would be driven out of business under the Secretary's rates. The District Court said with respect to these contentions (p. 755):

> * * * No one nor an average of all of the great many different extremes and variants of cost figures could be accepted as a reasonable standard. The audits for 1925

showed that this one item [salesmanship costs] from $4 to $20 per car; the firms with large business having lower costs. So the Secretary, in the exercise of his discretion and judgment, decided that $5 a car for selling cattle and sheep, and $3 per car for selling hogs, was as much as ought to be imposed upon the commerce. We cannot find in the record any grounds upon which the court has any power to set aside that conclusion.

The plaintiffs have caused elaborate audits to be made from the books of the agencies to show that, if each should charge up $5,000 a year on account of the services of each salesman employed or owner salesman in 1925, many agencies would have a balance in red at the end of the year, if the Secretary's schedule should be applied. Arguments are built up on this fact. It is a fact, and a very obvious one, but it in no wise tends to prove that the Secretary's order is oppressive or unjust. Those estimates are made by taking credit for expenses which the Secretary condemned as excessive and unnecessary.

Neither do we find the extensive computation concerning averages to be material. The audits show, and indeed it is obvious, that the Secretary did not find a figure of $5 a car for cattle and sheep salesman cost, and $3 for hogs, from any average of the costs to the different agencies. This salesman cost item was very high to some agencies and low to others. To add the two extreme figures together and divide by two,

and so reach an average, would be no indication whatever of what a reasonable cost was. No significance can be attached to the many ways in which the auditors have used their computations as to averages.

The shippers and public are entitled under the law to have the charges kept within a reasonable figure, and the Secretary is to judge of that upon evidence. The Secretary having exercised his judgment, the court cannot interfere, except on a showing that the Secretary was wrong. But merely to show that he did not adopt or apply a mathematical mean between two extremes in no way tends to show that he was wrong. On the contrary, the adoption of such a mathematical mean would, as in the case of jury verdicts, suggest gross error on the face of it. * * * He [the Secretary] refused to be bound by either the lowest cost he found, or by the highest, or by any mathematical average. He found the cost which he deemed normal and reasonable, well below the highest and well above the lowest. As to each item there is proof that some agencies are getting the thing done in actual operation well within the maximum fixed. In each instance there are some agencies that are not keeping within the maximum. Necessarily so. Undoubtedly, if rates were fixed so high that certain profits were assured to all regardless, the agencies would multiply much faster than live stock could be brought to the market, and an endless

> chain of rate increases would be necessary. * * *

Appellants also suggest that although the Secretary has purported to determine a "normal" cost, he has not in fact determined the normal cost, because "normal" means "average" or "ordinary", and that a normal cost can be determined only by some method which derives an average cost or something analogous thereto (appellants' brief, p. 83). But an average cost is not necessarily normal or reasonable. If the constituent costs which have gone into its composition are abnormal or extravagant, it reflects their abnormality and extravagance.

Appellants, in objecting to the failure of the Secretary to use some statistical method, attack his use of judgment in determining reasonable costs (appellants' brief, p. 85).[13] The mere fact that appellants believe that the statistical methods they advocate operate mechanically and without the exercise of judgment by the Secretary, is not necessarily demonstrative of the intrinsic merit of these methods. Appellants' argument on this point is obviously an objection to the fundamental basis of the rate-making method which was approved in *Tagg Bros. and Moorhead* v. *United States,* 280 U. S. 420, and is conclusively answered by that decision.

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[13] It is interesting to note that appellants rely heavily upon appraisals of the value of owners' services made by a committee appointed by appellants (R. 1092). These appraisals were made by an exercise of unfettered judgment.

D. The test period used by the Secretary was adequate

Appellants assert that the single year 1932 was an inadequate test period upon which to base findings of reasonable costs and profits (appellants' brief, pp. 109–113). They allege that this period failed to reveal variations in market conditions which take place over a longer period of time (appellants' brief, p. 109). In this connection it is significant that in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, the Secretary's findings were based on an audit made for a single year (*Tagg Bros. & Moorhead* v. *United States,* R. 400–699).

It is not entirely accurate to speak of the Secretary as having used 1932 as a test year. It is true that the functional unit costs set forth in the Secretary's findings were derived from analysis of the business of appellants for the year 1932 (par. 110, Secretary's findings, R. 133). The accountant for the Government, however, had prepared an audit and a functional unit cost analysis of the operations of each firm for both 1931 and 1932, and this material was before the Secretary when he made his findings (par. 109, Secretary's findings, R. 132–133). An exhaustive survey was also made of the economic history of the Chicago market and the factors which have influenced it since its establishment in 1865 (par. 9–42, Secretary's findings, R. 70–87) and the Secretary had before him data showing the annual receipts of the Chicago market

for each year from 1865 to 1932 (Resp. Ex. 12, Sched. 12) and also the monthly receipts of the market for the years from 1923 to 1932, inclusive (Resp. Ex. 12, Sched. 20).

In his findings the Secretary shows the volume of receipts of the Chicago market for each year from 1920 to 1932, inclusive, and the percentage of these receipts to the total receipts at the seven largest livestock markets in the United States (R. 72–73). A study was also presented showing the drawing power of the Chicago market as compared with other markets (R. 74–75). Figures were presented to show the ratios of rail and truck receipts for the years 1923 to 1932, inclusive (R. 76). Seasonal variation has been shown by a table presenting monthly variations in rail and truck receipts for 1932 (R. 77–78). Studies were made showing the distribution of receipts among the various species in each year from 1923 to 1932, inclusive (R. 86). It is clear, therefore, that the Secretary did not restrict his investigation to the operations of appellants for a single year; on the contrary, he considered not only seasonal variations but also long-period trends. That the Secretary also gave consideration to changing economic conditions which affect the Chicago market is clearly shown by paragraph 101 of his findings (R. 127).

Appellants assert that the Secretary selected 1932 as the test year *because* it was a low-volume year (appellants' brief, p. 110), but the record does

not support this assertion. The Secretary stated that his primary purpose in taking 1932 was because it was the year next preceding the one in which the hearing was held (Secretary's findings, par. 110; R. 133).[14] However, it is clear that in choosing 1932 the Secretary used a period which was favorable to appellants because the receipts of the Chicago market for 1932 were lower than those for any of the preceding ten years (R. 76). Functional unit costs calculated on the basis of the receipts of that year would naturally tend to be higher than those for the preceding years.

[14] In paragraph 110 of his findings the Secretary stated (R. 133):

> The rates hereinafter prescribed are based upon a general consideration of all facts of record. The functional unit costs set forth in this order are derived from an analysis of the business of each of the respondents for the year 1932. The year 1932 has been used for this purpose for the reason that it is that next preceding the one in which the hearing was held. The receipts for the year were lower than they were during the year 1931 and lower than they had been for a number of years previous. The use of a full calendar year gives due weight to the seasonal changes which take place in the marketing of livestock. A schedule of rates adequate to produce reasonable costs and reasonable profits in a low-volume year should not prove to be too low in those years in which an increase in volume occurs.

Examination of this paragraph fails to reveal the "prophecy" of increased receipts which the appellants read into it (appellants' brief, pp. 112, 113). The Secretary stated merely that rates which would produce adequate revenues in a year of low receipts should provide adequate revenue in years in which receipts were larger.

Appellants' own witness, Earle D. Mudd, testified in the hearings before the examiner that the unit cost per car for selling livestock was greater for all species in 1932 than in 1931 (R. 1088–1089). If the Secretary had used the figures for 1931 in arriving at the functional unit costs which he set forth in his findings, those costs would have been correspondingly lower and the reasonable unit costs determined by the Secretary would have reflected the decrease. Similar results would doubtless have followed if the Secretary had used a test period which included years prior to 1931. Finally, as the Secretary said in his findings (par. 110, R. 133): "A schedule of rates adequate to produce reasonable costs and reasonable profits in a low volume year should not prove to be too low in those years in which an increase in volume occurs." Appellants can hardly deny that in this respect the year 1932 was more favorable for them than a longer test period would have been.

The period selected as the basis for the determination of reasonable unit costs is not too short a time for the reflection of true market conditions. The situation here should be distinguished from one in which rates are fixed for a single utility. In such a case it may usually be necessary to take a period longer than one year in order to account for long range variations in the utility's experience. When rates are fixed for a large number of utilities with varying market experiences, a

shorter period of time is adequate. Changed conditions do not affect all market agencies in the same way or to the same extent. Even in a single year there is wide variation in their experiences. In a year in which the aggregate receipts of the market as a whole decline the receipts of some individual firms increase in volume. Thus while the market as a whole declined in volume in 1933, the receipts of thirty-eight firms increased in volume, although the receipts of fifty firms decreased (Pet. Ex. 2, R. 266–273). To some extent a similar situation exists when 1931 is compared with 1932 (Resp. Ex. 18, Sched. 10; Resp. Ex. 12, Sched. 14). This shows clearly that a single year provides a sufficiently wide variation in the experience of the individual firms to provide an adequate basis for the determination of reasonable unit costs.

The changes in the number and identity of market agencies operating at Chicago make it difficult to draw accurate comparisons of costs over long periods of time. Petitioner's Exhibit 2 (R. 266–273) shows that even in the period of two years and four months which is covered, numerous market agencies withdrew from business or were consolidated with others. The comparison of costs of firms which are now in operation with the costs of different firms which were in operation five years ago does not provide an accurate standard for the determination of reasonable costs.

Appellants contend that the production of livestock declined in 1934 and 1935 and that consequently the receipts of the Chicago market were very low in those years (appellants' brief, pp. 109–110). These circumstances, if they existed, afford no support to appellants' attack on the test period used by the Secretary. Appellants' contentions as to the effect of these changed conditions on their operations are inconsistent with the proof which they offered in the court below. Their Exhibit 2 (R. 266–273), as explained by their accountant (R. 253, 254), shows that market conditions improved during 1933 and the first four months of 1934 and that during that period there occurred a progressive reduction of the hypothetical deficit which appellants allege would have been produced by the application of the prescribed rates.

Appellants cite the decision in *Denver Union Stock Yard Company* v. *United States*, 57 F. (2d), 735 (D. C. Colo., 1932) in support of the proposition that the use of a single year provides an inadequate basis for rate determination. The situation in that case is clearly distinguishable. There the Secretary prescribed rates for a single organization, rather than for a large number having varied experience. Moreover, it was expressly stated by the court that in that case the Secretary selected for the test period the year in which the market receipts were the second highest in volume in the entire history of the market (p. 752).

Clearly the same objection cannot be made in this case, in which the Secretary employed a year in which receipts were unprecedentedly low.

Appellants also quote from the opinion of this Court in *West Ohio Gas Co.* v. *Commission*, 294 U. S. 79. In that case the rate-making body had before it data for 1929, 1930, and 1931, but selected for rate-making purposes only those figures which represented the business for 1929. It was the arbitrary selection of the earliest year, and the failure to consider the later years in which lower revenues were earned by the utility which was criticized by this Court. This Court said (pp. 81–82):

> We think the adoption of a single year as an exclusive test or standard imposed upon the company an arbitrary restriction in contravention of the Fourteenth Amendment and of "the rudiments of fair play" made necessary thereby. *West Ohio Gas Co.* v. *Public Utilities Commission of Ohio* (appeal No. 1), decided herewith, *ante*, p. 63; *Chicago, M. & St. P. Ry. Co.* v. *Polt*, 232 U. S. 165, 168. *The earnings of the later years were exhibited in the record and told their own tale as to the possibilities of profit. To shut one's eyes to them altogether, to exclude them from the reckoning, is as much arbitrary action as to build a schedule upon guesswork with evidence available.* * * * "Estimates for tomorrow cannot ignore prices of today." *Southwestern Bell Tele-*

> *phone Co.* v. *Public Service Commission of Missouri, supra,* at p. 288. We have said of an attempt by a utility to give prophecy the first place and experience the second that "elaborate calculations which are at war with realities are of no avail." *Lindheimer* v. *Illinois Bell Telephone Co.,* 292 U. S. 151, 164. We say the same of a like attempt by officers of government prescribing rates to be effective in years when experience has spoken. A forecast gives us one rate. A survey gives another. To prefer the forecast to the survey is an arbitrary judgment. [Italics supplied.]

The situation in this case is not comparable to the one discussed by this Court in the language quoted above. As it has been pointed out, a test period inadequate for a single utility, may be adequate for a large number of utilities with varying experiences. Furthermore, the Secretary here has selected a test period which because of its high costs and low volume is more than fair to appellants.

E. *The Secretary properly based the schedule of rates upon the consignment as a unit and provided for appropriate graduations in charges according to the number and weight of animals in a consignment*

The schedule of maximum rates prescribed by the Secretary is constructed upon the consignment as the unit and provides for appropriate graduations

in charges according to the number and the weight of animals in a consignment.[15] In this respect the schedule of rates differs from the existing schedule of rates and the schedule prescribed in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, both of which used the carlot as the rate unit.

Although the appellants assign as error the failure of the lower court to find that the classification by the Secretary of livestock into grades depending upon weight and the prescribing of rates on a consignment rather than a draft basis was arbitrary, unreasonable, and without regard or relationship to cost (R. 1176), they do not strenuously press this objection to the basis of the rate schedule in their brief.

Indeed, appellants are not now in a position to contend that the Secretary should use the draft instead of the consignment as a rate unit. On October 19, 1935, appellants, purporting to act under the authority of the Packers and Stockyards Act, tendered to the Secretary for filing a tariff which employed exactly the same basis as that used by the

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[15] A consignment for the purpose of assessing selling charges is all of the livestock of one species delivered in the name of one person to one market agency, to be offered for sale during the trading hours of one day (R. 191–192).

A consignment for the purpose of assessing buying charges is all the livestock of one species bought at any time but shipped or delivered to one person on one market day (R. 192).

A draft is all of those animals in one consignment weighed as a single sales or purchase classification (R. 192).

Secretary in the tariff fixed by him in this case. Both used the consignment as the rate unit. Both contained weight classifications for cattle and calves, and for swine, and exactly the same weight divisions were used in each instance. Both make adjustments in rates according to the number of head contained in each consignment, the only difference being that the Secretary, in graduating charges according to the number of head in the consignment. employed three divisions while the market agencies employed two.[16]

It is not disputed that in recent years, livestock has been arriving in the Chicago market in smaller lots than was previously the case. There has been an increase in the number of consignments arriving by truck (R. 434, 471, 713, 754), and such consignments generally contain a smaller number of head than do consignments arriving by rail (R. 437–438, 592, 754). Even as to livestock arriving by rail there has been an increase in the volume which arrives in small lots (R. 855, 875). There is no doubt that the work of sorting, grading, and handling small mixed lots of livestock requires more time and effort than the sale of large lots of a single grade or species. It is this fact rather than anything peculiar to the mode of transportation which makes it more diffi-

[16] The tariff tendered to the Secretary for filing on October 19, 1935, is involved in the case of *United States* v. *J. M. Corrick et al.*, No. 656 on the docket of this Court. That schedule is set forth on pages 19–22 in the record of No. 656.

cult to handle livestock arriving by truck (R. 792, 714, 857, 981). It is also true that the process of selling livestock has increased in complexity. Buyers have become increasingly more selective in their purchases, and it is consequently necessary to sort livestock more closely than formerly (R. 528).[17]

It was because of these changed circumstances that the Secretary in setting up the schedule of rates abandoned the carlot unit used as the basis for the existing tariff and for the tariff prescribed in *Tagg Bros. & Moorhead* v. *United States*. The considerations which prompted this action are summarized by the Secretary in paragraphs 163–166 of his findings (R. 183, 185). By using the consignment as the rate unit and providing for modifications of charges according to the number and weight of animals in the consignment, the Secretary has made ample allowance for the extra time and effort now required to sell cattle as contrasted with the time and effort required when livestock arrived in larger lots.[18]

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[17] Evidence with respect to these changes in market conditions is found on the following pages of the record: 528, 745, 714, 767, 926, 1003, 999, 976, 954.

[18] The weight classifications provide for larger charges per head in the case of heavier types of livestock. Charges for the sale of consignments are progressively lower per head as the number of head in the consignment increases. See the schedule of charges set out on pages 191–194 of the record. These gradations in charges tend to compensate market agencies for the greater unit cost involved in handling small lots of mixed livestock. In view of the tariff structure, there

F. *The determination of reasonable costs by the Secretary does not unlawfully invade the field of management*

Appellants suggest that a determination of reasonable costs by the Secretary is an unwarranted and arbitrary interference with the management of appellants' businesses. In *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 439, this Court disposed of a similar contention in these words:

> * * * There is here no attempt to fix anyone's wages or to limit anyone's net income. Differences in skill, industry and experience will continue to be factors in the earning power of the several plaintiffs. For the order fixes only the charges to be made in individual transactions.

By determining reasonable unit salesmanship costs, the Secretary does not dictate to any market agency "what it can or must pay a cattle salesman" (appellants' brief, p. 81). It is misleading to sug-

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is no merit in appellants' suggestion in different sections of their brief that in prescribing rates, the Secretary has ignored the change in conditions and the fact that more time and effort is required to sell small mixed lots of livestock. See for example pages 48–50 and 90 of appellants' brief. At page 90 appellants contend that the Secretary in determining reasonable costs for salesmanship should have determined separate items of cost for small and mixed lots of cattle. This would have involved an unnecessary complication of the determination of reasonable costs. The Secretary determined reasonable costs on a per-head basis and then made ample allowance in his tariff structure for the additional work and expense involved in selling small and mixed lots.

gest, as appellants do, that the Secretary determined that "$4,500 is a reasonable price to be paid to a cattle salesman" (appellants' brief, p. 86), and that the determination of a reasonable cost for business getting and maintenance is the substitution of the Secretary's judgment for that of the owners (appellants' brief, p. 64). What the Secretary has done in the case of salesmanship costs is to associate a certain salary figure with the sale of a certain number of head in a year. This association is made for the purpose of determining unit costs and not in an attempt to fix salaries. It is not a determination by the Secretary that every salesman who sells a given number of head shall receive the designated salary or that a salesman who sells less shall not receive that or even a larger salary.

Nor is the determination of an allowance for unit costs of business getting and maintenance a determination as to the total amount which may be spent for those purposes. It is a determination of the amount which may be charged against the rate payers for those purposes, but nothing prevents the owner of a market agency from spending more than the allowance for business getting and maintenance if he wishes to do so, provided that he takes the excess from savings effected in other costs or from profits, or from the ample margin over and above reasonable costs and profits which the Secretary's rates provide.

II

THE PRESCRIBED MAXIMUM RATES ADMITTEDLY WOULD HAVE YIELDED IN 1932 A MARGIN OF $493,491 OVER AND ABOVE THE COSTS AND PROFITS FOUND BY THE SECRETARY TO BE REASONABLE

It is conceivable that in a rate case the question might arise as to whether the prescribed rates would in fact yield the costs and profits found by the regulatory authority to be reasonable. That question would involve a problem separate and distinct from the question of whether the findings of reasonable costs and reasonable profits were in fact reasonable and supported by the evidence.

But in the instant case, no such question can arise nor indeed have appellants tried to raise it. The adequacy of the rates prescribed to produce the costs and profits found by the Secretary to be reasonable is beyond dispute. Appellants have expressly stipulated that in the year 1932 the rates prescribed by the Secretary in the instant case, as applied to the composite and aggregate business of the appellants, would have produced a margin of $493,491 over and above the reasonable costs and reasonable profits found by the Secretary (R. 1179).

This liberal margin which the rates will yield over and above the reasonable costs and profits supplies additional revenue which in normal course will be additional profit. It also furnishes a cushion to offset any possible error which may have crept into the calculations made in determining reasonable costs. This margin, moreover, fur-

nishes a protection against possible temporary hardship which may occur from time to time through normal fluctuations in marketing conditions.

The undisputed presence of this liberal margin over and above the costs and profits found by the Secretary [19] to be reasonable considerably simplifies this case and narrows the issue in the final analysis to the reasonableness of the Secretary's cost findings and the sufficiency of the evidence on which they rest.

III

THE MATERIAL FINDINGS MADE BY THE SECRETARY ARE FULLY SUPPORTED BY THE EVIDENCE

Appellants' attack on the findings of fact made by the Secretary of Agriculture are chiefly directed

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[19] At first glance it might appear that the prescribed schedule does not adequately cover the costs determined to be reasonable because the rates per head for some of the livestock arriving in the larger consignments are less than the per head costs and profits found reasonable. (Cf. R. 180 and R. 186–188). But the schedule also shows that the rates per head for the livestock of each species arriving in the smaller consignments are higher as to each species than the per head costs and profits found reasonable for that species. While it could readily be demonstrated by a detailed analysis by size of consignment of the livestock arrivals during the test year that these higher rates for smaller consignments would more than offset the lower rates for larger consignments and that the maximum rates in the schedule as a whole will produce revenues liberally in excess of the total reasonable costs and profits for each species, such demonstration is unnecessary in view of the concession that the maximum prescribed rates would have produced in the test year substantially half a million dollars more than the total reasonable costs and profits as found by the Secretary.

at (1) the findings as to reasonable costs of salesmanship (appellants' brief, pp. 38–63), (2) the allowance for the cost of business getting and maintaining (appellants' brief, pp. 64–75), and (3) the allowance to cover profit (appellants' brief, pp. 76–79). This section of appellees' brief will deal with these findings, and the evidence which supports them.

It should be noted that the Secretary's findings were made on the basis of an investigation of the conditions existing in the Chicago stockyards over a considerable period of time, after a careful audit and analysis of the business of appellants in the years 1931 and 1932, and after the taking of testimony in lengthy hearings before an examiner. It is significant that the District Court, upon an *independent* consideration of the evidence before the Secretary and of the evidence tendered to the Court by appellants, adopted the findings of the Secretary *in toto* as its own.

A. *The Secretary's findings as to reasonable salesmanship costs are fully supported by the evidence*

The Secretary's findings with respect to salesmanship are found in paragraphs 120 to 134 of his findings (R. 139–150). In determining reasonable salesmanship costs the Secretary found it necessary to associate a designated salary with a certain performance figure. The Secretary concluded (par. 134; R. 149–150):

Upon consideration of the conditions under which salesmanship is performed on the Chicago market, the fluctuation of receipts from day to day and from season to season, the volume of livestock handled by the respective firms, the volume handled by various salesmen in a year, month, or day, and the estimates of witnesses as to what could be expected of a salesman, it is found that it is reasonable to associate a salesmanship performance of 27,000 head or above of animals of the bovine species with a salary of $4,500 and up; a salesmanship performance in the case of hogs of 87,000 head and above with a salary of $3,600 and above; and a salesmanship performance in the case of sheep of 270,000 head and above with a salary of $4,000 and above.

On the basis of this association the Secretary found that the following constitute reasonable per head costs to be covered into rates on account of salesmanship (R. 150):

Cattle and Calves	$0.1667
Hogs	.0414
Sheep	.0148

The determination of a relationship between a salary figure and salesmanship performance places no limitation upon what a salesman can do or may earn. It determines merely the reasonable per head salesmanship cost to be covered into a reasonable schedule of rates applicable to a unit of service. What a salesman may earn depends upon his

skill and ability and the volume of livestock available for him to sell.[20]

The determination of the relationship between a salary figure and a particular salesmanship performance is not to be misunderstood as the fixing of a salary by the Secretary. It places no limitation upon what a salesman can do or may earn but merely determines the reasonable salesmanship cost per head to be covered into a schedule of reasonable rates.

Appellant makes the contention, which will be answered immediately below, that the salesmanship performance of 27,000 head or above of cattle and the corresponding figures used by the Secretary with reference to sheep and hogs are higher figures than the evidence warrants. It is to be noted at the outset that the Secretary does not assume in determining his reasonable unit costs that every salesman will meet these performance figures. He merely associates these performance figures with salesmen receiving an annual salary of $4,500 and up. Approximately 75% of the employed salesmen now engaged in the sale of cattle receive annual salaries of less than $4,500 and the median salary received by salesmen of this class is $3,204. Approximately 60% of the employed salesmen engaged in selling hogs get an annual salary of less than $3,600 (the figure used by the

[20] See the discussion of this point on pages 46–47, *supra*.

Secretary in determining reasonable costs) and the median salary received by such salesmen is $3,322.50. Approximately 68% of the employed salesmen engaged in the sale of sheep receive an annual salary of less than $4,000 (the figure used by the Secretary in determining reasonable costs) and the median salary of such salesmen is $3,041.29. (Gov. Ex. 49, pp. 283–285.) Even, therefore, if it should turn out that a considerable proportion of the salesmen in the business do not measure up to the salesmanship performance associated by the Secretary with a salary of $4,500 a year, this does not of itself vitiate the Secretary's computation of reasonable costs since it is to be assumed that in the future, as at present, the larger number of salesmen in the industry will not receive that salary.

1. THE SECRETARY'S SELECTION OF FIGURES AS TO REASONABLE SALESMANSHIP PERFORMANCE FOR USE IN DETERMINING REASONABLE UNIT COSTS IS FULLY SUPPORTED BY THE EVIDENCE

The determination of reasonable unit costs to be attributed to salesmanship must necessarily be predicated upon a decision as to the volume of business which can be handled effectively by a competent salesman who receives a volume of business sufficient to utilize his time with a fair degree of efficiency.

In considering the question of salesmanship performance, the Secretary examined the salesmanship records of the market agencies at the Chicago

stockyards. Calculations were made by both the government accountant and the accountant for the appellants with respect to actual salesmanship performances in 1932. The government accountant considered only the time spent in the selling or buying function, eliminating such time as was spent by salesmen in yarding, business getting, and other functions (R. 653). The accountant for the appellants in most instances considered the full time of each employee who did any selling at all as having been entirely spent in selling without eliminating any time spent in yarding, business getting, or other activities (R. 1082).

The calculations of the government accountant show that the following eight firms had a high calves in 1932 (number of salesmen taken from Gov. Ex. 49, pp. 280–282; total carlot figures taken from Resp. Ex. 12, Sched. 14): [21]

Firm No.:	*Cattle and calves* — *Number of carlots or carlot equivalents per salesman in 1932*
18	1,668
4	1,355
48	1,236
66	1,210
92	966
24	951
56	909
71	900

His calculation showed that the following firms had a high average salesmanship performance per salesman for hogs (number of salesmen taken from

[21] According to calculations made by the accountant for appellants, there were only two firms whose salesmen sold an average of 1,000 cars of cattle and calves in a year (Resp. Ex. 12, Sched. 24).

Gov. Ex. 49, pp. 280–282; total carlot figures taken from Resp. Ex. 12, Sched. 14): [22]

Hogs	*Number of carlots or carlot equivalents per salesman in 1932*
Firm No.:	
85	1,488
4	1,186
12	1,080
23	965
78	1,020
51	985
38	944
63	972
83	906
93	902

For sheep the computations of the government accountant showed that the following two firms had a high salesmanship performance (number of salesmen taken from Gov. Ex. 49, pp. 280–282; total carlot figures taken from Resp. Ex. 12, Sched. 14): [23]

Sheep	*Number of carlots or carlot equivalents per salesman in 1932*
Firm No.:	
57	2,205
18	1,319

Appellants suggest that the experience of market agencies with a high salesmanship performance should have been disregarded by the Secretary in determining salesmanship costs because those agencies have a clientele which makes it possible for them to dispose of livestock in larger lots

[22] According to the computations of the accountant for appellants, there was no market agency whose salesmen sold an average of 1,000 carlots of hogs in 1932.

[23] The computations of appellants' accountant show that the average sales per salesman for these two firms exceeded 1,035 carlots.

or drafts [24] than do many of the other market agencies. They contend that the high salesmanship performance of such firms is wholly the result of this ability to sell livestock in comparatively large lots or drafts. They have set forth on page 38 of their brief a table which purports to demonstrate that as the average number of head per sale or draft goes down, the average number of cars sold per salesman goes down also.[24] There is no doubt that to a limited extent there is a relationship between the average number of head in each sale transaction or draft and salesmanship performance, but the size of the lots or drafts is not decisive or controlling so far as salesmanship performance is concerned. This is shown by the following table, based on information contained in Respondent's Exhibit 12, Schedules 13, 16, and 24:

Cattle and Calves

Name of firm	Total head *sold only*	Total drafts or sales	Average number of head per draft or sale	Average number of cars sold per salesman
C. H. Acker & Co	519	86	6.03	22
Wm. Daniel	2,106	281	7.49	90
Walter Bros	5,133	1,281	4.01	97
Louis Ambrecht & Co.[1]				
L. S. Werden	3,853	2,157	1.79	143
Drovers Commission Co	48,521	10,098	4.81	562
Lawler Bros	157,137	31,214	5.03	642
Kuenster Livestock Commission Co				
Stafford Bros	[2] 129,069	27,739	4.65	744
Sullivan Commission Co				
Quinn Commission Co				
National Livestock Commission Co	139,057	23,898	5.82	1,043
John Clay & Co	147,790	20,084	7.36	1,139

[1] Ambrecht is cleared by Walter Bros.

[2] These firms were listed together by the accountant for appellants in determining the average number of cars sold per salesman.

[24] See the definition of a draft on page 18, *supra*.

This table shows, for example, that the average number of head per draft sold by the firm of William Daniel was 7.49, the average number of head per draft sold by John Clay & Co., was 7.36. Yet the salesman of John Clay & Co. sold an average of 1,139 cars as against an average of 90 cars for the salesman of William Daniel. Here, then, are two firms, both of which sell cattle and calves in lots of approximately equal sizes, yet the salesmanship performance of one is very high and the salesmanship performance of the other low. It is obvious that the explanation for the poor salesmanship performance of some of the appellants is not to be found in the small number of head per draft.

Appellants contend that the experience of market agencies with a high salesmanship performance is not typical,[25] that the average for all market agencies is much lower than the figures used by the Secretary,[26] and that these circumstances show that the Secretary's findings were made in disregard of the facts. The contrast between the salary and performance figures associated by the Secretary, on the one hand, and the market averages claimed by appellants, on the other hand, has little significance. In associating certain figures the Secretary

[25] See for example the discussion on pages 36 and 37 of appellants' brief.

[26] See for example the contrast made on page 25 of appellants' brief.

was not attempting to determine an average performance or an average salary. He might with propriety have taken lower salary and performance figures. In that event, deviation from and contrast with market averages would have been much less striking.[27] The basic deficiency in this objection of appellants is that it assumes that the Secretary should have been guided by the experience of the average market agency. Appellants disregard the fact that the rate-making method used required the determination not of average costs but of the costs of a market agency which is in a position to operate in an efficient and economic manner. Appellants' objection in essence is not an objection to the weight of the evidence upon which the Secretary has acted but against the rate-making method which he has applied. Appellees do not contend that the market agencies whose salesmanship performance equals the figure used by the Secretary are "typical" or "average" in the sense in which appellants use those words. They do contend that the experience of those market agencies shows what can be done by the salesmen of a market agency which utilizes

[27] For example, the Secretary might have associated a salary of $2,250 with the sale of 500 carlots of cattle or calves. The salary figure would have been lower than the market average and the performance figure would have been approximately equal to the average salesmanship performance as that average was computed by the Government accountant.

the services of the salesmen in an efficient and economic manner.

The use of market averages as criteria of the reasonableness of the Secretary's findings is particularly objectionable because the experience of many market agencies has no probative value whatsoever. There are many firms whose volume of business is so small that their experience cannot be used as a standard in determining reasonable costs. The extremely small annual volume of business transacted by some of the appellants is shown by the following table (Respondents' Ex. 12, Schedule No. 24–A):

Name of Firm	Number of Salesmen	Number of Car Equivalents of Cattle and Calves
C. H. Acker & Company	1	22
Adler & Sons Co. (9 mos.)	¾	138
William Daniel	1	90
Fred Freeman	1	40
I. O. Fry	1	68
G. F. Hogan	1	11
Lambright, Keys & Houston	2	245
Charles H. Moberly	1	52
Nalley Commission Company	4	628
Schroeder Commission Company		
W. C. Patterson	1	164
Pritchard Commission Company	2	178
A. P. Schmal (11 mos.)	1 11/12	97
J. E. Strader	1	42
Walter Bros	2	194
Louis Armbrecht		
L. B. Werden	1	143
	20¾	2,112

The average number of cars per man for these small-volume firms is slightly over 100 cars per man per year. Obviously, the actual experience

of these firms is not an adequate test of the Secretary's finding that a salesman may sell 27,000 head (or approximately 1,000 carloads) of cattle and calves per year if he has that many to sell. A firm may receive even 200, 300, 400, or more carloads of cattle and calves per year and maintain one or two full time cattle and calf salesmen, and yet its experience could not furnish any material basis upon which to judge whether a salesman may reasonably sell 1,000 carloads per year.[28]

A commission firm need not be one of the larger firms in order to have a high salesmanship performance per man. It is a matter of adjusting the number of salesmen to the volume of business handled. Some of the smaller firms make a relatively better showing than some of the larger firms because they keep their salesmanship costs somewhat in harmony with the volume of their business.

The fact is that many market agencies operate under such conditions that their present organizations and scale of operations cannot be regarded as efficient or economic and neither the existing rates nor any reasonable rates would enable them to pay the present costs of their operations and

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[28] The testimony of Howard M. Gore, one of appellants' own witnesess in the hearings before the examiner, supports the propriety of disregarding the experience of firms with a low volume of business in determining reasonable costs. For example, Mr. Gore testified that he did not believe that a rate should be fixed high enough to enable a firm which received only thirty-seven carloads of cattle in one year to continue in business (R. 1148).

provide a profit besides. There was testimony given in the hearings indicating that there were more firms operating on the market than are necessary to handle the volume of business (R. 319, 322, 551, 734–735). In fact a member of one of the appellant firms testified that he did not believe all the firms were operating at full capacity (R. 734).

The over-expanded condition of the industry in the Chicago stockyards is best illustrated by the current practice whereby several small-volume firms may be "cleared" by, or purchase service from, larger firms. A number of the smaller firms receive insufficient business to enable them to meet the overhead expenses incident to the maintenance of a complete market agency establishment. Accordingly, these firms frequently enter into arrangements with larger firms whereby the latter attend to certain details of the business of the former. For this the smaller firm pays to the larger a portion of the commissions earned on the livestock which the smaller firm receives, and continues to hold itself out to its patrons as an independent market agency.

The Secretary found that there are only 23 firms on the market which handle their own business exclusively and have no clearing arrangements, and that there were 32 other firms engaged in clearing 51 other firms (par. 66, Secretary's findings, R. 99).[30]

[30] Testimony was given in the hearings with respect to the practice of clearing (R. 393, 448, 460, 487, 887, 897, 898, 916, 941, 965).

Various types of services are provided by "clearing" firms. One of the more common forms of clearance operations relates to financial transactions. In such instances the "clearing" firm collects sums due to the firm "cleared" from the buyer, and remits to the livestock producer the sums owing to him by the firm "cleared" (R. 375, 487, 1005). In such cases the bond of the "clearing" firm usually covers the financial obligations of the firm "cleared" (R. 375, 445, 448, 460). Other services which are performed by "clearing" firms include the performance of all of the office work of the firm "cleared", such as the bookkeeping, billing, and the preparation of account sales (R. 375, 393, 448, 916). Various "clearing" firms also buy and sell livestock (R. 445, 448, 894, 916, 941, 965, 1004), provide yarding service (R. 393, 448), and advertise (R. 448) for the firms cleared.

The charges made by "clearing" firms for their services range from 5 percent (R. 460) to 50 percent (R. 445, 966) of the commissions earned by the firm "cleared." Such charges frequently reach 25 percent (R. 375), 35 percent (R. 916, 1005), and 40 percent of (R. 445) the commissions earned by the firm for which the service is rendered. Such payments are made by the firms "cleared" only because they are unable to earn sufficient income to provide those services for themselves (R. 1004). Thus, Mr. Mullen, who operates the Mullen Commission Company (R. 802), stated that he was compelled to "clear" through Gillogly & Company because his

receipts are insufficient in volume to enable him to maintain an office of his own (R. 802, 813). It is his ambition to regain enough volume to enable him to again do business on his own account; he estimated that he would require receipts of 150 carloads of livestock per month in order to re-establish his own firm (R. 813).

It must be obvious that the firms which are "cleared" in this manner cannot properly be considered in determining reasonable salesmanship performance and reasonable salesmanship costs. A successful commission business cannot be conducted on receipts of 50 cars per year (R. 930). No firm which receives a volume of business insufficient to enable it to maintain its own office service, or to do its own yarding or selling, and which must therefore pay out 50% of its commissions for such services, can be said to be the reasonably efficient firm which is protected by law in its right to earn a profit.[31] A rate schedule raised to a level sufficiently high to enable all of these "cleared" firms to operate profitably would be manifestly unfair to the livestock producer who must pay those rates, and would serve only to induce the entrance of numerous other small-volume market agencies into the market. The result would be to divide the volume of receipts among an even greater number of market agencies; the inefficient firms would be un-

[31] It is significant that the firms which perform the "clearing" services apparently find it profitable to do so at half of the usual commission rate.

able to operate successfully, even under the increased rates, and a further rate increase would be necessary. This demonstrates the wisdom of the principle upon which the established method of rate determination is based—the promulgation of a rate structure which will produce sufficient revenue to enable every firm of reasonable efficiency to earn its reasonable costs of operation and in addition a reasonable compensation for the services which it renders to the livestock producer.

The Secretary's determination of a reasonable salesmanship performance was not based solely upon the actual experience of those market agencies which are in a position to operate in an efficient manner. In addition to this evidence, the Secretary had before him the testimony of a number of witnesses as to the number of animals which salesmen had been known to sell, and the number which a salesman might be expected to sell if he were furnished with a sufficient volume of business to utilize his services in a reasonably efficient manner.[32] The testimony with respect to what a salesman should reasonably be expected to do is admittedly opinion testimony. It was extracted from witnesses, most of whom were hostile, and some of whom were, in effect, warned on the witness stand, by objections made by appellants' counsel, that the testimony might be used to reduce the rates which they or their employers would be permitted to

[32] Some of this testimony is summarized on pp. 65–71, *infra*.

charge.[33] Under these circumstances, it is not surprising that in many cases diametrically opposed conclusions may be drawn from the testimony of a single witness.[34]

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[33] In paragraph 122 of his findings, the Secretary commented on the failure of members of the respondent firms to be frank in their expressions of opinions on this point and as to the extent to which their attitude was influenced by the character of the objections made by counsel (R. 142). Appellants stated in their brief on page 42 that the Secretary's comments were "a flagrant misstatement as regards the conduct of counsel or the attitude of witnesses." It is submitted that an unbiased examination of the record will disclose that the Secretary's comments were justified. (See particularly R. 362; R. 380; R. 585–586; R. 661–668; R. 672–684; R. 380). For example, on page 362 of record, appellants' counsel in making objection stated that witnesses, in hearings with respect to other stockyards, probably testified as to the volume of sales which could be made by a salesman "without recognition of the fact that it is of such grave importance to the welfare of themselves and to their children * * * and in answering the question they did not expect that the answer would be used in the way it was used."

Appellees call this Court's attention to these objections not for the purpose of suggesting that the conduct of appellants' counsel was in any way improper, but to indicate that the opinion testimony was, in most cases, taken from hostile witnesses and to show why, in many cases, witnesses made statements in one part of their testimony which they appear to contradict in other parts.

[34] Appellants, in their brief (pp. 26–36), make an attack upon much of the testimony referred to by the Secretary in his findings as to salesmanship performance. This attack consists of pointing out that some of the witnesses to whose testimony the Secretary referred in his findings, made other statements which tend to show that it is impossible to estimate how many head of cattle a salesman could sell in a year if he had sufficient volume to utilize his services in an efficient manner.

Despite this fact and the obvious reluctance of many of the witnesses to express opinions as to reasonable salesmanship, appellants submit that a reading of the testimony taken at the hearings shows that the Secretary's findings as to a reasonable salesmanship performance for each species of animal is fully supported by the evidence.

Cattle and calves.—The Secretary associated an annual salary of $4,500 with the sale of approximately 27,000 head of cattle and calves. In support of the selection of this figure there was ample testimony given at the hearings that throughout the year a salesman might be expected to sell an average of five carlots a day. As there are approximately 200 market days in a year, this daily average would produce the yearly performance figure used by the Secretary.

Mr. Mollin, Secretary of the American National Livestock Association, in response to a question as to how many carloads of cattle a salesman of ordinary efficiency should sell in the course of a year (R. 314) said:

> Well, I never yet saw a cattle salesman that placed any number limit on the number of cars that he could sell if he had them to sell. I would, in answering the question, base my answer on a 200 selling-day year, which would be practically four days a week, and I think that any salesman would say that he could sell at least 10 cars of cattle on any day, if he could get them to sell, and that would be a minimum of 2,000 cars a year applied to cattle.

Moreover, he stated (R. 317):

> I have seen them sell so many more than that number of animals, on occasion, without apparently straining his ability, that I think I have been very reasonable in stating it at 10 cars a day * * * I am testifying from my experience as to what I think they can do. I think that any of them can sell 10 cars a day, that is if they can get them, that is my testimony.

Harold Summers testified that John Clay & Co., for which he sold cattle, had on the previous day received 18 or 19 loads of butcher stuff which averaged about 30 head to the load. Although the market was slow (R. 625), two salesmen sold that quantity of cattle during that day and only 40 head of cattle were held over for the next day (R. 624).

Mr. Patterson, a small operator who had only one salesman besides himself, stated (R. 376, 378):

> If, on the following Monday morning, I were to receive 10 loads of cattle, I would go out and sell them and not take on any extra help.

Mr. Brotzman, president of the firm of Miller, White and Woods, asserted that on a good market a steer salesman could sell 5 carloads a day (R. 849, 858). He had seen salesmen sell many more than that number in a day, even as recently as the summer in which he testified, and although he was unable to give the exact number of carloads sold, he believed that the approximate number would be 10 (R. 858–859). He also testified that his salesmen were as good as any of the other salesmen in

the yards (R. 861) and that his firm could have sold a larger volume of cattle in 1932 (R. 861).

Mr. Woods, one of the partners in the firm of Swanson, Gilmore & Castenholz, testified that on the preceding day his firm had received 17 loads of cattle which were sold by three salesmen (R. 933).

Mr. Greene, head cattle salesman for Rice Brothers (R. 996, 1001), testified that on the preceding Monday his firm had received 18 straight carloads of steers and that he had personally sold 10 of those carloads (R. 1001). In the case of all but two of those carloads, sorting was required. In addition, the witness on the same day sold about 90 head of cattle which arrived by truck (R. 1002).

Mr. Vaughan, president of McCausland, Hoag & Vaughan, stated that in 1932 the average of the four cattle salesmen of that firm was 709 cars per salesman, and that the bulk of the sales were made by the witness himself (R. 907). C. O. Robinson, of Charles O. Robinson Co., testified that in 1932 "with any kind of an ordinary market, I could have handled 25 cars at least" a day, but as to whether he could sell that many carlots day in and day out would depend on conditions.[34a] (R. 479-481.)

It is clear from the testimony that the low salesmanship performance of a number of firms oper-

[34a] It is the testimony of this witness which was referred to in the Secretary's findings and which appellants say on page 27 of their brief they cannot find in the record.

ating on the Chicago market is caused by the insufficient volume of their business (R. 373–374, 376, 479–481, 581, 585, 742, 751, 860, 878.)

Sheep.—The Secretary associated the sale of 270,000 head of sheep and above with a salary of $4,000 and above. On an average, there are 226 head of sheep in each carlot sold (Resp. Ex. 12, Sched. 13–14). F. R. Marshall, secretary of the National Wool Growers' Association (R. 384), stated that he had known salesmen to sell from four to six cars of sheep per day and that on one occasion, 15 or 16 cars of sheep were sold in a day by John Clay & Company and a similar number by W. R. Smith & Company (R. 390–391), even though at the time in question the market was slow (R. 392). John Swanson, sheep salesman for John Clay & Company, asserted that he has ordered the delivery of possibly 20 carlots of sheep in one day from the feedlots with the expectation of selling them, although he has frequently been assisted by another salesman (R. 408). The calculations of appellants' own account shows that John Clay & Co. in 1932 had an average performance per salesman of 1,111 carlots of sheep (Resp. Ex. 12, Sched. 24C). James L. Merrion, of Merrion & Wilkins, stated that in October of 1932 he had sold 15 cars of sheep in about eight hours (R. 417), although there were

some days when it would not be possible to sell that many. The figures of appellants' accountant indicate that the salesmen of this firm in 1932 sold an average of 1,087 carlots of sheep (Resp. Ex. 12, Sched. 24C).

The salesmanship performance which may reasonably be expected of a salesman whose services are utilized in an efficient manner is shown by the facts in the record with respect to W. A. Burns. The record shows that Burns and one assistant in 1932 sold 546 cars of sheep for Alexander Conover & Co. (Resp. Ex. 12, Sched. 24C). Although it is not absolutely clear from the record, it may be inferred that Burns sold by far the greater part of those sheep (R. 959). In the same year, 1932, Burns sold all of the 449 cars of sheep handled by 7 other commission firms which employed him as a sheep salesman (Resp. Ex. 12, Sched. 24C).

Hogs.—The Secretary associated the sale of 87,000 head of hogs and above with a salary of $3,600 and above. The average number of hogs in each carlot sold is 88. (Resp. Ex. 12, Sched. 13–14). The salesmanship performance which can reasonably be expected of a salesman when he has a sufficient volume of business to utilize his services in an efficient manner is plainly demonstrated by the experience of two cooperative market agencies operating at the Chicago Stock Yards. In 1932 the Farmers' Union Livestock Commission had a sales performance for hogs of 124,878 head per salesman (Gov. Ex. 49, p. 186; Gov. Ex. 15–99,

Sched. 2). In the same year, the Chicago Producers Commission Association had a salesmanship performance for hogs of 101,653 head per salesman (Gov. Ex. 49, p. 186; Gov. Ex. 15–100; Sched. 2).

Levi Spencer, the owner of L. Spencer & Company (R. 486), stated that he could sell five or six cars of hogs a day provided the market was right (R. 491). He did not care to handle personally more than eight or ten carloads of hogs in a day, but he could handle that amount properly (R. 499). He also testified that in 1932 and 1933 he could have handled a greater volume of hogs than he did handle. Mr. McClelland, a member of the firm of H. D. Copeland & Company, testified that in 1923 he had sold more than 2,900 cars of hogs and that he is as able a salesman now as he was at that time but that at present he does not receive that volume of business (R. 799). He also testified that although in 1923 he had sold more than 2,900 cars of hogs, his firm does not at the present time receive a thousand cars to be sold by its two salesmen. He believes that he is at present quite as good a salesman as he was in 1923 (R. 799). Paul A. Filler, of Filler, Wilson & McClelland, was of the opinion that a greater volume could have been handled by his firm with his present force (R. 1007). W. H. Brott estimated that he could handle approximately 20 percent more business with his present organization if the receipts were forthcoming (R. 1008).

Mr. Conover, president of Alexander Conover & Company (R. 951), testified that if he were assured of an extra hundred carloads of receipts for the given year he would not engage another salesman (R. 961). Similarly, Mr. Mallory, an employee of Wm. Gentlemen & Son, declined to estimate the number of hogs he could sell on an ordinary day but stated that he could sell as many hogs as any other salesman on the Chicago market under the same conditions (R. 443).

2. APPELLANTS' ATTACK ON THE SALARY FIGURES USED BY THE SECRETARY TO DETERMINE REASONABLE COSTS IS BASED ON COSTS IMPROPERLY PADDED BY THE INCLUSION OF EXCESSIVE APPRAISED VALUES FOR THE SERVICES OF OWNERS OF MARKET AGENCIES

Although appellants refer to testimony that it is improper to measure the value of a salesman by the number of animals he can sell (appellants' brief, p. 47), it seems clear that no valid objection can be made to the Secretary's action in associating a certain salary figure with a certain salesmanship performance for the purpose of determining unit costs.[35] It is clear from the record that there is a direct and substantial relation between the volume of business handled or controlled by a salesman and

[35] It is improper to regard the Secretary as having measured the value of any salesman by his association of a salary figure with a salesmanship performance. In making that association the Secretary was merely determining a relationship for the purpose of ascertaining reasonable unit costs, and was not attempting to fix salaries or to make a requirement as to the number of animals which a salesman must sell, or to make any determination as to the "worth" or value of the salesman.

his salary. The audit of the commission firms disclosed that the compensation of approximately 25% of the salesmen employed in 1932 was based wholly or in part on a percentage of the commission received from the business controlled by them (par. 120, Secretary's findings; R. 140). There is ample testimony in the record with respect to this relationship between volume and salary (R. 464, 669, 793, 854).[36] For example, there was testimony that salesmen of equal ability receive different salaries, depending upon the volume of business which they handle (R. 1009).

Appellants' most strenuous objections, however, are not against the action of the Secretary in associating a certain salary figure with a designated sales performance but rather against the salary and performance figures which the Secretary used. In so far as those objections relate to the performance figures used by the Secretary, they have been answered on pages 63–71, *supra*.

The reasonableness of the salary figures selected by the Secretary for use in determining reasonable unit costs is clearly demonstrated by the following table which shows the number of salesmen

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[36] William G. McClelland, of H. D. Copeland & Company, testified as follows (R. 801):

> I would say that the bigger the volume the salesman handles, the bigger the salary the firm could afford to pay him. I don't think that a good salesman could afford to work for a salary that a firm could afford to pay that salesman on fifty cars of business, but some men have to work for less than they can afford to and they cannot help themselves.

for each species falling in the different salary brackets (Gov. Ex. 49, pp. 283–285):

Cattle salesmen

(Salary figure selected by the Secretary, $4,500)

No. receiving—	1932
$6,000 or more [1]	15
5,000 to 6,000	10
4,000 to 5,000	14
3,000 to 4,000	29
2,000 to 3,000	32
Less than 2,000	15
Total	115

[1] Firm 77 had two men who worked only two months each during the year. The amount of money paid to each would, as shown in Gov. Exhibit 15–77, on a yearly basis place them among the number receiving $6,000 or more. These men are not included in the above table.

Hog salesmen

(Salary figure selected by the Secretary, $3,600)

No. receiving—	1932
$6,000 or more	0
5,000 to 6,000	6
4,000 to 5,000	12
3,000 to 4,000	17
2,000 to 3,000	18
Less than 2,000	8
Total	61

Sheep salesmen

(Salary figure selected by the Secretary, $4,000)

No. receiving—	1932
$6,000 or more	2
5,000 to 6,000	2
4,000 to 5,000	1
3,000 to 4,000	3
2,000 to 3,000	7
Less than 2,000	1
Total	16

In attacking the salary figures used by the Secretary, appellants make frequent use of figures which they claim represent the average salaries *paid* to salesmen and the average unit costs actually incurred for salesmanship by the market agencies operating at the Chicago stockyards. These average salary and salesmanship cost figures have been improperly padded by the inclusion of excessive appraised values for the services of owners of market agencies.

These appraisals were made by a committee of five, appointed by appellants (R. 1012). In each case they represent the amount which the committee believed the owner could earn if he were to seek employment with some other firm (R. 1022). The committee did not differentiate salaries on the basis of the volume of business handled by the owner (R. 1016, 1023, 1024). It did not consider whether the business was increasing or declining (R. 1019), or was conducted at a loss (R. 1019–1020). These appraised values bear absolutely no relation to the compensation actually received by the owners from their firms. The following table, based upon data contained in Appellants' Exhibit 12, Schedule 11, shows the great discrepancy which exists between the compensation actually received and these appraised values:

Firm No.	Owner	Actual Compensation Received	Appraised Value	Increase
20	Monti Cenklin	$7,999.92	$15,000.00	$7,000.08
48	E. H. Keunster	7,175.83	18,000.00	10,824.00
56	E. L. Vaughan	9,999.96	18,000.00	8,000.04
59	G. P. Hixon	2,639.15	5,000.00	2,360.85
66	E. G. Fulkerson	12,000.00	25,000.00	13,000.00
70	W. H. Palmer	5,140.00	12,000.00	6,860.00
77	Chas. Rice	12,000.00	25,000.00	13,000.00
81	A. Wertheimer	4,100.00	12,000.00	7,900.00
11	C. J. Castenholz	9,600.00	15,000.00	5,400.00
45	Chas. A. Dunbar	10,080.00	22,000.00	12,000.00
54	W. G. Norris	6,017.45	15,000.00	8,982.55
83	W. A. Roberts	3,853.00	10,000.00	6,147.00
83	T. T. Sinnard	3,853.00	10,000.00	6,147.00

It should be observed that in the majority of the instances shown in the above table the appraised value is more than double the actual compensation received. As to all of appellants, the inclusion in costs of the excessive and hypothetical appraisals of the value of the services of owners would pad costs by $353,607.82 in excess of the amounts actually realized by the owners in salaries and profits (Resp. Ex. 12, Sched. 11).

It is these excessive and hypothetical values which appellants have included in the computations which are the basis for their attack on the salary figures used by the Secretary in determining reasonable unit costs. For example, in a table on page 40 of appellants' brief they state that the average salary (1932) for cattle and calf salesmen is $5,608.08, *whereas in fact it was only $3,839* (Gov. Ex. 49, pp. 283–285). The alleged average of $5,608.08 reflects these excessive appraised values. (Respondents' Exhibit 12, Schedule 24–A). Salary figures, similarly inflated, are used in other

sections of appellants' brief.[37] In fact, 75 percent of the cattle salesmen who were employed in arm's length bargaining received in 1932 an annual salary of less than $4,500. The median annual salary for employed cattle salesmen in that year was only $3,204 (Gov. Ex. 49, pp. 283–285). In the case of the other species, similar discrepancies exist between the average annual salaries actually paid to employed salesmen and the average salaries claimed by appellants on the basis of these hypothetical and inflated appraised salaries for owners.

This use of these appraisals naturally leads to absurd results. Under the old rate schedule the maximum rates which may be collected for cattle and calves range from $21.00 to $24.00 per car on single deck consignments (R. 57–62). But according to Respondents' Exhibit 12, Schedule 24–A, at least eleven firms spent more for salesmen's salaries per car for cattle and calves than the total commissions to which they are entitled under that rate schedule. This is demonstrated by the following table, which is based upon that Exhibit:

[37] The extent to which these appraisals affect the figures used by appellants is strikingly demonstrated in the discussion of the salesmanship performance of the firms of John Clay & Company, Merrion & Wilkins, and W. R. Smith & Sons, on page 61 of their brief. Appellants state that six salesmen employed by these firms did more than one-half of the business of the market in sheep in 1932 and received an average salary of $6,666.66. The figure of $6,666.66 is obtained by including the value of the services of two owners (J. S. Merrion, of Merrion & Wilkins, and J. C. Eastes, of W. R. Smith & Sons). The salaries paid the employed salesmen average only $3,874.75. (Resp. Ex. 12, Schedule 24–C.)

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Name of Firm	Number of Cars Sold, 1932	Amount Claimed For Salaries	Average Salary Per Car
C. H. Acker & Co	22	$2,000.00	$90.91
Central Livestock Com. Co	977	23,943.01	24.50
William Daniel	90	2,500.00	27.77
Fred Freeman	40	1,200.00	30.00
I. O. Fry	68	1,800.00	26.47
Gillogly & Co	1,012	23,696.00	23.41
Geo. F. Hogan & Co	11	1,200.00	109.09
Nalley Com. Co	628	18,043.33	28.73
Schroeder Com. Co			
Pritchard Com. Co	178	8,034.99	45.14
Strader Bros	42	1,200.00	28.57
Swiney Bros	673	20,544.00	30.52

Most of the other firms claimed salaries so great as to cause the average salary per car to range from $10.00 to $20.00. (Respondents' Ex. 12, Schedule 24–A.)

A number of illustrations may be given to show the extent to which alleged costs of salesmanship have been increased by inclusion of these appraised values. The Central Live Stock Commission Co. handled 977 cars of cattle and calves in 1932. Its three employed salesmen received salaries aggregating $11,943.01. The services of one owner were appraised at $12,000, bringing the total salesmanship cost of this firm to $23,943.01. The inclusion of this excessive allowance, which was not in fact paid, caused the average salary of salesmen per car for this firm to appear to be $24.50—more than the per car commissions under the old rate schedule. (Respondents' Ex. 12, Schedules 11 and 24–A.) Another comparison showing the fallacy of the salary appraisal method employed by the

appellants may be made between John Clay & Company and the National Live Stock Commission Company. In 1932 John Clay & Company handled 5,694 cars of cattle and calves while the National Live Stock Commission Company handled 5,214 cars of the same species. Each of these firms, according to the appellants' accountant, had five cattle and calf salesmen, and the average number of cars per individual for both firms was high. The average performance per man for John Clay & Company was 1,139 cars and for the National Live Stock Commission Company was 1,043 cars. The National Live Stock Commission Company has one owner who is a cattle salesman, and the appellants assert that his services should be appraised at $25,000 (Respondents' Ex. 12, Schedules 11 and 24–A). As a result the salaries shown for the National Live Stock Commission Company are almost twice those shown for John Clay & Company, although the per man performance of the National Live Stock Commission Company is almost 100 cars less than that of John Clay & Company. The appellants' audit shows that John Clay & Company actually spent $27,144.98 for salaries for classified cattle and calf salesmen, while the National Live Stock Commission Company claims $52,750 for cattle and calf salesmen. The result of this cost padding in the case of the National Live Stock Commission Company is to make that Company's average salary per car appear to be more

than twice that for John Clay & Company. *John Clay & Company which does not attempt to include these appraisals in the salesmanship costs shows in 1932 an average salary per car of $4.59 (Respondents' Exhibit 12, Schedule 24–A)*, which *is less than that which the Secretary has determined to be reasonable.*[38]

A similar instance of cost padding is found in the case of the Kuenster Live Stock Commission Company. That firm handled 1,833 cars of hogs and had an average performance of 367 cars per man for all of its salesmen (Respondents' Ex. 12, Schedule 24B). The owner of the firm, Mr. Kuenster, served as a hog salesman, and his services were appraised at $18,000, although he actually received only a salary of $1,400 and a profit of $5,775.83, making a total of $7,175.83 (Respondents' Ex. 12, Schedule 11). The appraisal allowed Mr. Kuenster more than $10,000 in excess of the sum which he actually received. The same situation exists with reference to practically all of the firms whose owners' services were appraised.

It is clear that the Secretary properly ignored these excessive appraisals of the value of the services of owners in determining reasonable salesman-

[38] The Secretary allowed $.1667 per head for cattle and calf salesmanship costs (R. 150) and found that on the average a car contains 29 head (R. 146–147). Thus, $.1667 × 29 = $4.83 per car.

ship costs and looked instead to the salaries actually paid to salesmen who were employed by market agencies in arm's length bargaining. None of the firms on the market could afford to pay its owners the amounts claimed to be the fair value of their services and those amounts bear no relation to the real value of such services. Appellants have no right to include such hypothetical and imaginary expenditures in any cost analysis upon which a rate structure is to be based.

B. *The Secretary's Findings as to Reasonable Costs for Getting and Maintaining Business are Fully Supported By the Evidence*

After a study of the expenses incurred by the market agencies for the purpose of getting and maintaining business, the Secretary found that a reasonable unit cost for that purpose should not exceed nine percent of the total reasonable cost found (par. 145, Secretary's findings; R. 166–167). This determination relates only to non-salary expenditures and does not affect in any way the time which may be used by a salesman for soliciting. On a per head basis, the allowance amounts to $.0350 for cattle and calves; $.0125 for hogs; and $.0050 for sheep (R. 180). On a per car basis, the allowance amounts to $1.06 per car for cattle and calves; $.98 for hogs; and $1.00 for sheep (par. 130, R. 146–147).

This determination of reasonable unit cost is not a restriction on the amount that can be spent for the purpose of getting and maintaining business. A market agency may spend more if it takes the funds from savings effected on other functions, or from the excess over and above reasonable costs and profits which the Secretary's rates will admittedly produce. Appellants are free to make expenditures which are self-liquidating because of the increased business they produce.

The methods employed by appellants in getting and maintaining business are summarized in paragraphs 81 to 86 of the Secretary's findings (R. 119–121).[39] Practically all of the commission firms send salesmen into the country to visit shippers and to solicit business (R. 356, 422, 443, 446, 463, 490, 511, 587). During such trips it is customary for the salesmen to sort and grade cattle and to make appraisals for the shipper (R. 401, 463, 490). Information is given to the shipper concerning the feeding of cattle and market conditions (R. 810, 888, 913–914, 987). Occasionally, long trips requiring thirty days or more are taken to visit western shippers (R. 400, 422, 511, 792).

[39] The Union Stock Yard & Transit Company, on behalf of the market as a whole, advertises in newspapers to secure shipments to Chicago stockyards and also advertises over the radio for the same purpose. It sends representatives into the country to visit shippers, and conducts the International Live Stock Exposition as a means of drawing business to the Chicago stockyards (R. 302).

A certain amount of solicitation is carried on by personal letters (R. 444, 470, 659, 718, 892). Circular market letters are sent to customers living in the territory from which the firms draw their business to inform them of current market conditions (R. 396, 476, 618, 718, 812, 891). Some firms endeavor to send circulars only in the periods in which the shippers have livestock ready for market (R. 964). The information contained in these market letters is secured from the salesmen and buyers, from the United States Bureau of Agricultural Economics, the Drovers' Journal, and the Research Department of the National Live Stock Marketing Association (R. 599–600). Commission firms advertise in trade papers (R. 396, 617–618, 1007). At least one market agency publishes its own monthly organ which is sent to shippers (R. 659). Shippers are frequently provided with free subscriptions to market papers such as the Chicago Daily Drovers' Journal (R. 396, 426, 891, 892, 898, 910). Another form of advertising employed is the distribution of specialties such as pencils and notebooks (R. 490, 592, 891–892), and such items as marking shears, sheep markers and canes (R. 600). Occasionally shippers are entertained by salesmen (R. 553, 592–593).

Some firms have adopted the practice of making loans to shippers in order to obtain their patronage (R. 408, 659, 720, 992). It is generally understood that shippers will send live stock to the commission firm which has made a loan on them (R.

660). At least one firm maintains a transportation and claim department which collects railroad claims for shippers without direct charge to the shipper (R. 601). The same firm makes radio broadcasts during the week days (R. 600).

In Paragraph 142 of his Findings, the Secretary recognized that some expenditure for the purpose of getting and maintaining business was necessary and proper. He said (R. 162):

> Respondents are entitled to use such means and methods as will enable them to keep their names before the public. It is recognized that the reputation for rendering good service is one of the most important factors in holding and getting business but respondents do not deem that alone to be sufficient. Personal contacts with their customers and prospective customers is regarded as an important element in the maintenance of the business. Respondent members of the Chicago Live Stock Exchange have mutually imposed some limitations upon themselves as to the amount of time and the expense devoted to business getting efforts. Each respondent holds its services out to be of the very highest character. Beyond the payment of a reasonable amount in the form of rates to enable the respondents to keep their names before the public, the shipper should not be required to pay to have himself persuaded to patronize one commission firm rather than another, when each serves him equally well.

The Secretary's analysis of the expenditures for getting and maintaining business made by the various firms showed that the actual non-salary expenditures for business getting and maintaining varied among the different firms from nothing to approximately 27 percent of the gross commissions (Gov. Ex. 49, pp. 103–105). All firms spent an average of approximately 11 percent of their total commissions on non-salary expenses for business getting and maintaining (Gov. Ex. 49, p. 105). A great many firms actually spent less than the amounts allowed by the order of the Secretary. The government's cost study (Gov. Ex. 49, pp. 22–24), showed at least twenty-one firms which had smaller per head business getting and maintaining costs for cattle and calves than were found to be reasonable by the Secretary.[40] At least fifteen firms had lower expenditures per head for this pur-

[40] Appellants emphasize the fact that the Chicago Producers' Commission Association, a firm owned and managed by shippers and producers of livestock, spends more for the purpose of getting and maintaining business than the amount found by the Secretary to be reasonable. Appellees submit that the experience of the Chicago Producers' Commission Association has no special relevancy. There is nothing in the record to show that in this respect the business of the association is conducted on a reasonable and efficient basis. Certainly the mere fact that it is owned and managed by shippers and producers is no basis for assuming this to be the case. Presumably, such an association is subject to competitive pressure similar to that which drives ordinary market agencies to spend excessive amounts for business getting and maintenance.

pose for hogs than that found to be reasonable by the Secretary (Gov. Ex. 49, pp. 31–33); and at least six firms had lower expenditures than that allowed by the Secretary for sheep (Gov. Ex. 49, pp. 31–33). In addition, there were sixteen firms whose books did not show any non-salary expenses whatever for business getting and maintaining.

A few firms made very large expenditures for the purpose of getting and maintaining business. This is illustrated by the following table, which compares non-salary expense for business getting and maintenance with gross income from commissions (Gov. Ex. 49, pp. 22–24, 31–33, 40–42).

Firm No.	Non-Salary Expense for Business Getting and Maintenance	Gross Income From Commissions[1] (Less Seconds)	Percent of Expense to Gross Income
49	$334.18	$1,209.75	27.61
91	1,854.18	6,827.93	27.15
12	2,310.62	8,640.58	26.74
36	2,074.11	8,215.29	25.25
13	1,734.02	5,650.13	30.04
6	8,047.74	40,245.43	20
67	909.09	5,088.85	19.63
26	3,979.51	22,297.23	17.85
71	13,028.14	74,321.68	17.53
23	6,883.57	41,887.29	16.43

[1] "Seconds" are animals purchased at the stockyards by traders and placed with commission firms to be resold without moving them from the stockyards (R. 92-93). The acquisition of this class of business does not require business getting effort. Therefore, in the figure given above with respect to gross income, the commission received on sale of seconds has been eliminated.

The expenditures of some market agencies for the non-salary expense of business getting and maintenance ranged from $3 to $5 per carload of livestock. It is obvious that the expenditure of such amounts

is unreasonable and excessive. Even under the old rate schedule such expenditures would run from ten to twenty-five percent of the amount of the commissions. In the fac of the evidence, appellants' statement on page 66 of their brief that there is "no evidence in the record of waste or extravagance, in business getting and maintenance expenses" is obviously without foundation."[41]

In addition to this statistical evidence, there is testimony in the record which indicates that excessive and unnecessary costs are incurred for the purpose of getting and maintaining business. These expenditures are largely the result of the competitive conditions existing at the Chicago stockyards. The owner of one market agency stated that he is practically forced to spend a greater percentage of his gross commission in soliciting country business than he properly can afford to spend (R. 486, 497). The president of an-

[41] Appellants attach some significance to the statement made by Mr. Bachman, one of the government accountants, that in analyzing the amounts spent for business getting and maintenance he made no investigation to determine whether the amounts spent were proper (appellants' brief, p. 74). It was not Mr. Bachman's function to determine the propriety of the costs incurred by appellants. His investigation was made for the purpose of determining what costs were actually incurred. His statement was accurate but it does not indicate, as appellants seem to believe, that no investigation or determination was made as to the propriety of the amounts spent. That determination was made by the Secretary.

other market agency testified that for his own protection he was compelled in 1933 to hire a man to solicit in the country because he found that other firms were doing so (R. 910). A member of another firm admitted that some market agencies spend more for traveling expenses than they should (R. 710, 720). The president of another firm testified that he had investigated the additional business which had been secured by trips to the country and he had found that the trips required the expenditure of too much money (R. 924), and that they had not proved profitable to his firm (R. 928). Significant testimony was also presented to the effect that a number of firms have endeavored in recent years to reduce their expenditures for business getting and maintaining (R. 446, 738, 748, 910, 963–964) and that these reductions in expenditures have not been accompanied by any noticeable decrease in the volume of business (R. 446). There was also testimony that solicitors from Chicago firms visited distant areas which could be served by other markets (R. 312–313).

It is clear that shippers should not be required to pay to be persuaded to patronize one market agency rather than another. This Court has held that the rate payer cannot be made to bear the cost of an intense competitive struggle between rival utilities. In *Public Service Commission of Montana* v. *Great Northern Utilities Company,* 289 U. S. 130,

a suit was brought attacking a rate order as unconstitutional. The utility in question had a competitor in the same town and the rate order attacked fixed the same maximum and minimum rates for both utilities. The plaintiff utility alleged that the order deprived it of its right to compete for the preservation of its business. The District Court held that although the field was insufficient to support two utilities the rate-making body could not interfere with the right of the plaintiff utility to fight to a finish by rate competition and that the order was therefore unreasonable and beyond the statutory authority of the rate-making body. 1 F. Supp. 328; 52 F. (2d) 802. In reversing the decree of the District Court, this Court stated (pp. 134–135):

> The demand for gas in the community served is not sufficient to require both systems, and there is no suggestion that it is likely to become great enough to justify the expenditures made for them. The facts disclosed by the record compel the conclusion that, if competition shall continue in the future as in the past, appellee will not be able upon the rates within constitutional protection against reduction to earn a reasonable return upon the value of its property employed in the public service. The due process clause of the Fourteenth Amendment safeguards against the taking of private property, or the compelling of its use,

> for the service of the public without just compensation.[42]
>
> * * * * *
>
> But it does not assure to public utilities the right under all circumstances to have a return upon the value of the property so used. The loss of, or the failure to obtain, patronage, due to competition, does not justify the imposition of charges that are exorbitant and unjust to the public. The clause of the Constitution here invoked does not protect public utilities against such business hazards.

In objecting to the allowance made by the Secretary for business getting and maintenance, appellants insist that "the function of business getting and maintenance is not only to secure and retain business but to serve the shipper of live stock" (appellants' brief, p. 67). The best answer to this contention is furnished by the testimony of two representatives of associations of shippers. Mr. Mollin, secretary of the American National Live Stock Association (R. 308), stated with reference to the matter of advertising, soliciting, and business getting activities (R. 312):

> I think that the greatest saving that you will be able to make will come in that item. I have always taken the position that a reasonable amount should be allowed for that

[42] Compare *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 447.

> general combined purpose for advertising which it all boils down to in the end. Some of our people, some stock men do not go that far and say there should not be any allowance made. I have been willing that there should be a reasonable allowance, that the Secretary should determine from examination of all of the facts in the matter, and when the allowance has been made, I think it is immaterial to the live stock industry how the commission man spends it.

Mr. Mollin expressed the opinion that most live stock producers are willing to forego solicitation when it is expanded to the point where it is used as a base in making an unreasonable commission rate (R. 312). In describing the invasion by Chicago solicitors of the territory near the Denver market, Mr. Mollin used the following vivid language (R. 313):

> When there are many lambs coming to this market from northern Colorado and western Nebraska and those concentrated feeding areas, they actually have to shoo solicitors out of the chutes to load the sheep before they can get them loaded, there is such competition, sometimes six or eight people from one place trying to get the business, and that is not doing the industry a bit of good.

Another representative of shippers, Mr. Marshall, Secretary of the National Wool Growers' Association (R. 384), asserted that the volume of business diverted from one market agency to

another can not directly or indirectly be considered as enabling the commission men to give more efficient service or to give cheaper service (R. 388). He was of the opinion that no allowance whatever should be made in the commission rate for the expense of getting and maintaining business, and he expressed the opinion that his view represented the attitude of the individual members of his association (R. 393).[43]

It is clear from the record that the primary motive of the expenditures for business getting and maintenance is to gain a competitive advantage and not to serve the shippers. Thus it appears that trips made by salesmen into the country are made primarily to get business (R. 888–889, 969, 988, 463, 896, 512, 624, 659, 830, 854, 1011–1012, 987).

Mr. Henkle, vice-president and general manager of the Union Stock-Yard & Transit Company (R. 302), stated that the object and purpose of all of the advertising and soliciting activities of the market agencies is to draw the business to the particular commission firm (R. 305). In soliciting business in the country the salesmen recommend their own firms to the farmer (R. 971). On trips to the

[43] In appellants' brief they attack the testimony of Messrs. Mollin and Marshall as biased (appellants' brief, p. 67). This attack is apparently based on the fact that these witnesses were representatives of associations of shippers, a circumstance which gives their testimony peculiar weight in so far as it relates to appellants' contention that expenditures for business getting and maintenance should be regarded as made in the shippers' interest.

country the salesman of one firm is likely to encounter those of other firms (R. 593, 830). The salesmen endeavor to draw business from other firms operating on the same market (R. 408, 495). Mr. Kuenster, the owner of the Kuenster Live Stock Commission Company (R. 459), stated with reference to his soliciting (R. 474):

> If successful, it merely takes receipts away from some other commission firm and adds to my own.

To a great extent the competing market agencies operating on the Chicago stockyards solicit business from the same shippers (R. 624, 753, 740, 804, 984). A salesman will frequently solicit the patronage of a shipper who is known to have patronized another firm consistently in the past and whose cattle have been appraised by the salesman of another firm (R. 721–722, 1008). Mr. Benton, owner of Benton & Company (R. 1004), stated (R. 1005):

> I naturally solicit producers and farmers who have been sending their live stock to other firms on the Chicago market.

Similarly, Mr. Bowles stated (R. 1012):

> We would have to solicit the business of farmers and producers who ship to other commission firms on the Chicago market because everybody ships to somebody; they take mine away from me and vice versa, that is, they get them, and, when they pay our commission, they do not owe us anything; they are free lances.

Other witnesses testified that they solicited shippers they knew had been solicited by other commission men (R. 813). Mr. Baker, a partner in the firm of Baker, Heyne & Company (R. 826), stated (R. 834):

> If I am informed or know that a shipper has been solicited by another firm on the Chicago yards I certainly solicit that firm. I don't know anything about what other commission firms do about soliciting my business. I have met solicitors representing other commission firms doing business on the Chicago yards.

In view of the competitive purpose of these activities, appellants' contention that they are carried on in the interest of the shipper is clearly without foundation.

The appellants object to the cost allowed by the Secretary for the expense of business getting and maintenance on the ground that it has no relationship to actual costs (appellants' brief, p. 73). It is obvious that the Secretary did not attempt to make an allowance for business getting and maintaining which would approximate the costs actually incurred by many of the market agencies. He was seeking to determine the reasonable unit cost of such activities and he had before him ample evidence to show that the unit costs incurred by many commission firms for the purpose of getting and maintaining business were excessive and extravagant. An allowance made on the basis of the average unit cost of these activities would have reflected

their unreasonable expenditures. The expenses actually incurred by many market agencies for the purpose of getting and maintaining business, are patently inadequate as guides to reasonable costs, because the competitive conditions existing at Chicago tend to force those expenses beyond all reasonable limits. The present expenditures of the Chicago market agencies for business getting and maintenance are governed solely by the amount of money at their disposal. Some firms attempt to limit the amount of money spent for those purposes (R. 538), but the greater number do not. In the case of many firms there appears to be no definite policy with respect to the expense incurred for soliciting, and they do not budget such expenditures (R. 428–429, 475, 511, 599, 720). Nor does it appear that the commission firms apportion their funds devoted to this function in any particular manner between business getting and business maintaining expenditures (R. 552, 512).

Appellants also contend that in making an allowance for business getting and maintaining the Secretary disregarded the fact that it is necessary for appellants to meet the competition of direct buyers and of other livestock markets. Appellees submit that the Secretary properly found that shippers should not be compelled to pay, in the form of rates, for having other shippers persuaded not to sell their livestock direct to packers or on other markets. There are substantial grounds for doubt-

ing whether extravagant expenditures are effective in meeting this competition. Mr. A. M. Gentleman, one of the partners of William Gentleman & Sons (R. 985), asserted that he believed that his firm had secured some shipments which had been drawn away from the packers but admitted that he had kept no record to determine whether in fact this was the case (R. 988). Mr. Swanson, a salesman for John Clay & Company (R. 397), asserted that he had not been successful in getting many shippers to discontinue direct buying and to ship to his firm (R. 409). Mr. Filler, President of Filler, Wilson & McClelland (R. 1005), asserted that he would like to spend more money for business getting and maintaining expenditures but asserted that under the present circumstances it is useless to try to go out and get business from the direct buyers (R. 1007).

The size and general reputation of the Chicago market are strong drawing factors throughout the country, and the market would obtain a considerable volume of business regardless of whether it or the market agencies advertise (R. 304). In fact, it appears that the prices which may be obtained, and not advertising, is the decisive factor in determining the market on which livestock is to be sold (R. 809).

Furthermore, it appears that satisfactory services to shippers is more important in maintaining business than are extravagant expenditures for ad-

vertising (R. 408). Mr. Dunbar, a partner in the firm of Walters & Dunbar (R. 508) stated (R. 522):

> The best solicitation we can get is to have a satisfied shipper in a territory that is shipping regularly to Walters & Dunbar and reporting that fact to his neighbors.

Generally when a firm secures a customer that customer stays with the firm. Mr. T. E. Swiney, one of the partners in Swiney Brothers (R. 728) stated that more than 75% of the new business of that firm is received through old customers (R. 754). This view is confirmed by the testimony of Mr. Murphy, a live stock producer (R. 802), who testified that despite solicitation by other firms he ships consistently to Rice Brothers at Chicago because he has secured good service from that firm (R. 804).

C. *The Secretary's Findings as to Reasonable Profits Are Fully Supported by the Evidence*

Provision is made in the Secretary's order for profit to be covered into the prescribed rates. Paragraph 154 of the order states (R. 178):

> In addition to producing reasonable per-head costs incident to the handling of the different species of livestock, reasonable rates should provide also a profit, that is, compensation for management and the carrying of uninsurable risks.[44]

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[44] In *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, the Secretary in fixing rates made a determination as to reasonable costs but no determination as to reasonable profits (*Tagg Bros. & Moorhead* v. *U. S.*, R. 23–42).

Accordingly, the Secretary made the following per head allowance to cover management and uninsurable risks (R. 180):

	Cattle and calves	Hogs	Sheep
Management	$0.0350	$0.0125	$0.0030
Uninsurable risks	.0040	.0015	.0005

In addition to this allowance for management and uninsurable risks, the Secretary provided for interest at the rate of 6% on fixed assets and 7% on working capital (paragraphs 148 to 153 of the Secretary's findings, R. 173–178). This allowance covers the capital required for such items as (1) furniture and fixtures, horses, yard supplies, and automobiles; (2) working capital; and (3) materials and supplies (R. 173). The amounts covered into the prescribed rates for this purpose (R. 180) were determined upon a study of the capital requirements of the various commission firms operating on the Chicago market (R. 175–177).[45] It should also be noted that by his determination of reasonable unit costs for such functions as selling, office work, and the work performed by yard men, the Secretary has made adequate allowance for work done by an owner in performing those functions.

[45] The per-head allowances were (R. 138):

Cattle and Calves	$.0080
Hogs	.0025
Sheep	.0010

Furthermore, in considering appellants' contention that the Secretary's finding as to profits is unreasonable, it should be remembered that appellants have admitted by stipulation that the rates prescribed by the Secretary, if applied to the aggregate business done by all appellants in 1932, would have produced revenue sufficient to cover the costs *and profits* found by the Secretary to be reasonable and, in addition a margin of $493,491 over and above those costs and profits.

Appellants apparently do not object to the amount of the allowances made for uninsurable risks and for management, but they contend that those allowances should be classified as costs and not as profits. They insist that an owner is entitled to a "pure profit", that is, an amount over and above all operating expenses, including uninsurable risks and compensation for management (appellants' brief, pp. 76–77).

The allowance made by the Secretary for management is in excess of the amount necessary to provide for the actual cost of management or management wages. This affirmatively appears from the evidence upon which the Secretary acted in making the allowance and to which he refers in paragraph 156 of his findings (R. 179). There are two cooperative market agencies at the Chicago stockyards, and they employ managers. The salaries of these managers are fixed in arm's length bargaining and may properly be accepted as stand-

ards for determining the proper amount to be allowed for the cost of management.

The per car cost incurred for management by one of the cooperatives in 1932 was $.74 (Gov. Ex. 49, pp. 75, 186). For the other it was $.60 (Gov. Ex. 49 pp. 75, 186). The allowance made by the Secretary for management amounts to approximately $1.01 per carload. There was additional evidence in the record tending to show the liberality of the allowance made by the Secretary. E. J. Lawler, the sole owner of Lawler Bros., testified that not more than 20 percent of the total income realized by him in 1932 should be allocated to his managerial duties (R. 878). He withdrew $28,222 from the business in that year (Gov. Ex. 15–51C). In that year his firm handled approximately 5,616 cars and carlot equivalents of all species (Resp. Ex. 12, Sched. 14). On that basis, his managerial services cost the firm approximately $1.00 per carlot for all species.[46] The cattle and calves bought and sold by Lawler Bros. in 1932 averaged approximately 35 head to the car.[47] The Secretary's allowance per head for cattle and calves for management costs was $.0350. Applied to the cattle and calves actually handled by Lawler Bros. in 1932, this allowance would

[46] Twenty percent of $28,222 equals $5,644.40. $5,644.40 divided by 5,616 (cars and car equivalents) equals approximately $1.00.

[47] Respondents' Exhibit 12, Sched., shows that Lawler Bros. bought and sold 4,520 carlots or carlot equivalents, containing 158,140 cattle and calves.

amount to $1.22 per carlot. Thus, it appears that the Secretary's allowance for management as applied to the cattle and calves handled by Lawler Bros. in 1932 amounts to approximately 22 cents per carload in excess of the amount which Mr. Lawler testified should be allocated to the cost of management.

It is clear that the Secretary's allowance for management gives the owners an amount over and above management wages. If they are entitled to the *pure profit* for which appellants contend, then the order of the Secretary makes ample provision for such profit.

A serious question arises, however, as to the extent to which the owner of a market agency is entitled as a matter of law to a pure profit. The economic justification for such a profit is that it is compensation for the risk incurred by the entrepreneur.[48] In the case of a business enterprise

[48] See Taussig, "Principles of Economics," Volume II, p. 193:

"Another view, in some respects similar, separates business profits from wages by considering as wages that amount which the individual would have been paid if hired by some one else. An independent business man's actual earnings are likely to exceed that sum; the excess is business profits. Here emphasis is put on the element of risk. Profits differ from wages in that they are the result of the assumption of risk and the reward for that assumption."

Cf. Fisher, "Elementary Principles of Economics," p. 457. Compare Hardy, "Risk and Risk Bearing," pp. 32–41. Appellants appear to recognize that this is the basis for the allowance of pure profits. See particularly p. 78 of appellants' brief.

which requires the use of substantial amounts of capital the necessity of an allowance to compensate for risk is obvious. The owner of a market agency, however, is engaged in the performance of a personal service. The business requires little capital and the element of risk is of slight importance. Although appellants refer to the hazards which threaten the owners of market agencies, it is clear that these hazards involve risk only in the sense that they make future earnings problematical. They do not threaten the loss or destruction of property or capital embarked in the enterprise. In that respect the owner of a market agency is more analogous to a doctor or a lawyer or any other person engaged in rendering personal services than to the entrepreneur of economic theory.

Indeed, it may be seriously doubted if the concept of pure profit is capable of rational application to such a situation as here presented. Appellants contend an allowance for pure profit is necessary as an "incentive to ownership" (appellants' brief, p. 76). But such an incentive defies measurement. Must the allowance of pure profit be high enough to persuade all of the present owners to continue in business? If it is fixed at that point, will it not attract new owners into the field with consequent diminution of profits and demand for higher rates?

Appellants suggest that pure profit should be measured by the difference between the amount

which an owner actually withdraws from the business and the amount which he could earn working as a manager for some one else (appellants' brief, p. 77). There is no adequate criterion of what an owner could earn if he worked as a manager for some one else except the salaries of such managers as are employed in arm's length bargaining, and the Secretary has made an allowance for management which exceeds the unit costs of such salaries. Clearly, the appraised values placed on the services of owners by the committee appointed by appellants cannot serve as such a criterion. These appraisals were made in complete disregard of the actual possibilities of employment elsewhere, or of the volume of business done by the owner, or of his success in conducting his business.[49] The mere fact that in many instances services were appraised at twice the amount which the owners actually withdrew from their firms is alone sufficient to discredit the appraisals as a test of pure profit. It cannot be assumed that an owner will continue to run his own business, particularly in view of the risks which appellants insist exist, for compensation only one-half as great as he could obtain by working for another person.

Appellants seem to assume that because analysis of the abstract concept of profit discloses that it may include, in certain circumstances, an element of pure profit, that is, an amount over and above

[49] See the discussion of these appraised values on pages 73–75, *supra*.

all costs including the wages of management, the owner of a market agency has a legal right to rates high enough to produce such a pure profit. This assumption has no basis in either legal or economic theory. Economists do not regard a *pure profit* as either an inevitable or a necessary element in the compensation of the enterpreneur. This is shown by the remarks of Gustav Cassel, from whose discussion of pure profit appellants apparently have largely derived their argument on this point. In his *The Theory of Social Economy, New York,* 1924), Cassel, after defining pure profit, says (p. 168):

> * * * *However, it is only in a relatively few cases that the employer's profit is very large.* Most of them make a pure employer's profit only during favourable conjunctions. *As a rule, perhaps, the returns hardly suffice to cover all the costs in the broader sense in which we have taken the word here.* * * *
>
> *There are, of course, no rules as to the extent of this kind of profit. It is not a normal thing,* but a specific element of the individual business. It is often an outcome of sheer accident: for instance, some development of the market that is especially good for this particular business, on which the employer has had no influence. It varies a good deal, as a rule, with conjunctures in the relevant branch of trade. * * * [Italics supplied.]

It seems clear that the owners of appellants have no legal right to insist that rates be fixed high enough to guarantee to each of them a profit of this abnormal, uncertain, and speculative nature.

The usefulness of the concept of pure profits in abstract economic analysis is not in issue, but the attempt of appellants to apply the concept to the rate-making problems presented by this case leads only to confusion. Whether the Secretary included in his allowance for profit an amount for management wages which should properly have been classified as a cost, and whether in making the allowance he should have distinguished between management wages and pure profit, are questions of no practical importance. The fact is that the allowance made by the Secretary for management is adequate to cover not only management wages but any profits to which appellants are entitled as a matter of law.

IV

THE RATES FIXED BY THE SECRETARY ARE NOT CONFISCATORY OR UNREASONABLE

Appellants contend that "the rates prescribed by the Secretary are confiscatory of the business, property, and services of each appellant and violative of the Fifth Amendment of the Constitution" (appellants' brief, p. 114).

It seems doubtful if this case presents any issue of confiscation in the strict sense of that word. The business of appellants consists of performing personal services. The amount of capital required

for the business is small, and there is no dispute in this case as to the rate of return which the Secretary has allowed on that capital.[50]

In the case of an enterprise which involves the use of physical property or capital, the test of confiscation may be stated as follows: A rate is confiscatory if it will not produce a fair return upon the fair value of the property employed in the enterprise. This test is obviously inapplicable to the business of appellants. Indeed, it seems clear that a rate for personal service can never be confiscatory in the same sense in which a rate may be which fixes the return on physical property or capital. Certainly it cannot be true, as appellants suggest, that a rate for personal services is confiscatory merely because some of those performing such services may cease to do so if the rate is applied. Nor is it significant that some of those engaged in performing such service may be unable to do so at a profit under the rates prescribed. Appellants have no constitutional right to rates high enough to maintain all of them in business and to assure all of them a profit regardless of the econ-

[50] Both the accountant for the government and the accountant for respondents set up capital requirements for the following items: (1) sound value of furniture and fixtures, horses, yard supplies, and automobiles; (2) membership in the Livestock Exchange; (3) working capital to finance operations; (4) material and supplies' inventory (par. 148, Secretary's findings; R. 173). The Secretary allowed interest at 6% on fixed capital, except the value of exchange memberships, and at 7% on working capital (par. 153, Secretary's findings; R. 175).

omy and efficiency of their operation or of the reasonable value of the services which they perform.

Admittedly, if the Secretary of Agriculture prescribes rates which are unreasonable, those rates may be set aside, but to achieve that result it is not necessary to resort to the Fifth Amendment nor to the concept of confiscation. Section 310 of the Packers and Stockyards Act authorizes the Secretary to prescribe *reasonable* rates; if he prescribes rates which are in fact unreasonable, he exceeds his statutory authority and for that reason alone the rates must fall.

Appellees believe, however, that it makes no difference in this case whether the question be regarded as one of reasonableness or of confiscation.[51] In either event, the record does not support appellants' attack on the rates prescribed by the Secretary.

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[51] The view which is taken of this question may affect the scope of review to which appellants are entitled. If the question is merely whether the Secretary has exceeded his statutory authority, the Court will doubtless look merely to see whether his order is supported by substantial evidence. On the other hand, it is possible that if the constitutional issue of confiscation is involved, the Court will examine the record to see if the order is supported by the weight of the evidence. Appellees submit that it is immaterial which test is applied here, because the Secretary's order is supported not only by substantial evidence but by the weight of the evidence. In this connection it should be noted that appellants were accorded a trial *de novo* in the District Court and that court upon an independent consideration of all the evidence, including the evidence introduced in the District Court by appellants, adopted the findings of fact of the Secretary *in toto*.

Appellants cannot succeed in their attack on the rates which the Secretary has prescribed merely by showing that the Secretary considered evidence not properly admissible under the rules of evidence enforced in judicial proceedings or that there were certain errors in the reasoning involved in the determination of reasonable costs and profits or that the costs and profits determined to be reasonable were not as generous as appellants believed they should have been. See *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420. The ultimate question is whether the Secretary in prescribing the rates has acted so arbitrarily, capriciously, and unreasonably, that he has exceeded his statutory authority or has invaded the constitutional rights of appellants. It should be further noted that any attack which appellants make upon the Secretary's findings or upon the rates which he has prescribed must be sufficiently conclusive to overcome the admitted fact that those rates applied to the aggregate business of appellants in 1932 would have produced $493,491 in excess of the costs and profits found by the Secretary to be reasonable (R. 1179).[52]

[52] The rates fixed by the order which this Court upheld in *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, if applied to the aggregate business of the market agencies involved in that case in the test year of 1925, would have produced a margin of $3.41 per car over and above the costs there found by the Secretary to be reasonable. The rates here prescribed by the Secretary as applied to the aggregate business of appellants in the test year of 1932 would have produced a margin of $4.46 over and above the costs found to be reasonable. (See Appendix B, *infra*, pp. 134–135.)

Before considering the evidence on which the claim of confiscation is predicated, appellees wish to call this Court's attention to the allegations in the pleadings by which it is sought to raise that issue. The allegations with respect to confiscation made in the petition and complaint first filed in the District Court by appellants are found on pages 20–26 of the record. They consist of statements with respect to the aggregate market experience of appellants in 1932 and the effect of the application of the prescribed rates to the aggregate business done by all appellants.[53] No facts were alleged tending to show that the rates prescribed by the Secretary were confiscatory *as applied to the business of any particular appellant* in 1932. When evidence was

[53] For example, it is alleged that: The petitioners in 1932 suffered an aggregate loss of $298,536 and if the rates prescribed by the Secretary had been in effect in that year, the aggregate loss would have been increased by $719,337 (R. 21). The rates prescribed by the Secretary, if applied to the aggregate business of petitioners in 1932, would have caused a reduction of 25.47 percent in the gross selling commission for that year, a loss of 32.59 percent, compared with the loss of 9.56 percent actually suffered under the rates then in force (R. 21). The rates prescribed by the Secretary are confiscatory if applied separately to cattle and calves, swine, and sheep or goats, and the rates fail to yield to the petitioners and to each petitioner a fair and compensatory rate for stockyards service rendered by the petitioners and by each petitioner, or a return commensurate in value with services rendered, and will not reimburse to petitioners the actual operating expenses nor the expenses held to be reasonable by the Secretary, incurred in the rendition of such services (R. 22).

tendered in the court below on the issue of confiscation, the government objected to its admission on the ground that the pleadings did not properly present that issue (R. 211–212). Appellants thereupon moved for, and were granted, leave to amend their petition and complaint by the addition of the following allegations (R. 209):

> Each petitioner on his or its own behalf charges that the facts alleged in the foregoing paragraphs as to market experiences apply to his or its own business without substantial variation from the market experiences; that his or its own business is conducted economically, efficiently, and at reasonable costs and with the exercise of sound business judgment as to costs and expenditures; that the rates, charges, and practices prescribed by said order and said supplemental order, if permitted to become effective and if enforced, will deprive him or it of his or its property and business without due process of law, and will deny to him or it the equal protection of the laws in violation of his or its rights under the Constitution and the laws of the United States; and that the said order and supplemental order are without warrant and authority of law and if put into effect and enforced will confiscate his or its property and business without due process of law and in violation of the rights guaranteed by the Constitution and laws of the United States.

This amendment did not cure the defects of the first pleading. The allegation of the amendment that the facts alleged in the original petition and complaint as to market experiences apply to the business of each petitioner is without meaning. Allegations with respect to aggregate losses and decreases in aggregate commissions cannot be mechanically applied to the business of a particular appellant; the experience of a particular appellant is not necessarily the same as the aggregate experience of all appellants.[54] The amended pleading does not allege any facts with respect to the operating costs or gross commissions of any particular appellant, nor any facts to support the conclusion that the business of each market agency is conducted "economically, efficiently, and with reasonable costs, and with the exercise of sound business judgment."[55] This Court has frequently disapproved attempts to raise the issue of confiscation by such vague and omnibus allegations. See *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 448; *Hegeman Farms Corp.* v. *Baldwin*, 293 U. S. 163; *Beaumont Sour Lake & Western Railway Co.* v. *United States*, 282 U. S. 74, 88–89; *Public Service Commis-*

[54] Appellants' witness, Mr. Mudd, testified at the hearing before the district court that "there are no two firms operating on this market whose business can be said to be similar" (R. 234).

[55] Appellees do not object, as appellants suggest on page 127 of their brief, to appellants all joining as parties to a single suit; they object to appellants' failure to plead the ultimate facts upon which their claim of confiscation rests.

sion of Montana v. *Great Northern Utilities Co.* 289 U. S. 130, 136–137; *Dayton-Goose Creek Ry. Co.* v. *United States,* 263 U. S. 456, 487.[58]

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[58] In the recent case of *American Commission Co.* v. *United States*, 11 F. Supp. 965 (D. C. Colo. 1935), suit was brought by various market agencies engaged in business at the Denver Union Stockyards to set aside an order issued by the Secretary under the provisions of the Packers and Stockyards Act, prescribing a maximum rate schedule. Petitioners alleged, among other things, that the rates prescribed were confiscatory. These allegations were virtually identical with those employed in the amendment to the petition in this case. The District Court held that the pleading did not raise the issue of confiscation, saying (pp. 967–968):

"Confiscation is raised by paragraph 9 of the bill, wherein it is alleged generally that each petitioner in his own behalf says the facts set forth in the preceding paragraphs apply to his business equally, in so far as they relate to his business experience, and that each one conducts his business economically, efficiently, and at reasonable costs, etc. *The allegations are made jointly and not severally as to all the petitioners. There are no separate allegations of the situation of any individual plaintiff, nor of facts as to its invested capital, number of employees, or actual or reasonable cost of doing business, which, if true, would establish confiscation.* Such allegations standing alone are not sufficient in view of the disclosures of the record already referred to, especially when coupled with the admittedly competitive nature of the business.

"*To raise the issue of confiscation there should be, for the reasons stated, separate allegations of ultimate facts in respect to each plaintiff.* No attempt is made to explain these wide variations among the several firms in the cost of performing the same function. Obviously all cannot be efficient. General averages of the petitioners' outlays that go to make up the total cost of doing business, based only on actual experience, throw no light on the reasonableness of such charges; the efficiency or waste of any particular firm,

Appellants' attack on the rates prescribed by the Secretary is based primarily on eleven exhibits prepared by their accountant and introduced in evidence in the District Court (R. 259–296). The arguments based on these exhibits assume that the present costs of each appellant are reasonable and proper and that the Secretary must fix rates high enough to cover those costs and to provide a profit for the owner of the business regardless of the manner in which the business is carried on and the reasonable value of the services which it performs.

An examination of Exhibit 2 (R. 266–273), upon which appellants place much reliance, illustrates the essential weakness of their attack on the reasonableness of the rates prescribed by the Secretary.[57]

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nor are they helpful in determining what are fair allowances for a firm conducting its business fairly efficiently." (Italics supplied.)

[57] Exhibit 2 is not the only one of these exhibits subject to criticism. There are certain assumptions and mistakes in some of the others which indicate the care which should be exercised in drawing conclusions from the compilations which they contain. For example, Exhibit 1 (R. 259–265) compares the aggregate gross commissions received by appellants under present rates for the four months ending April 30, 1934, with the gross commissions which would have been received under the maximum rates prescribed by the Secretary, and derives a percentage of decrease from this comparison. It should be noted, however, that there is nothing to show that the receipts of live stock were normal in the four months of 1934 selected as the test period. Among other things, the use of a four months' test period does not take into account seasonal variations in the volume and character of the live stock arriving at the Chicago market. As it has been explained (pp. 42–43, *supra*), the income which will be

That Exhibit is designed to contrast the commissions actually earned by appellants in 1932, 1933, and the first four months of 1934 with the commissions which would have been earned under the rates prescribed by the Secretary, and the profit or loss of appellants for the same period with the profit or loss they would have incurred if the Secretary's rates had been in effect. In making these computations, appellants use two sets of cost figures, one set including the excessive and hypothetical appraisals of the value of owners' services and the other set excluding these appraisals. If this

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realized in the future from the application of the rates prescribed by the Secretary will depend upon the size of the consignments and the weight of the animals in the consignments which arrive at the Chicago market. It cannot be assumed that during the remainder of 1934 live stock arrived at the Chicago stockyards in consignments of compafable size or weight to the consignments which arrived in the four months used as the test period. Appellants' use of the four months of 1934 as a test period is patently inconsistent with their position that the Secretary should have used a longer period than one year for determining reasonable unit costs. It should be noted that the percentage of decrease in gross commissions, derived from Exhibit 1, is an essential part of the computations contained in Exhibit 2.

Exhibit No. 8 (R. 289) purports to compare the cost of operations with actual commissions and with the commissions fixed by the Secretary's order in the year 1932. The cost figures used in this comparison include the excessive and hypothetical appraisals of the value of owners' services which were not in fact actual expenses at all.

Certain of the exhibits, for example Exhibits 4 (R. 277), 5 (R. 280), and 6 (R. 283) make graphic representation based on data contained in Exhibit 2 and are subject to the same criticisms which are directed against that Exhibit.

Exhibit is to be given any probative force, it must be assumed that the actual costs incurred by appellants are reasonable, and they are entitled to rates sufficient to cover those costs together with an allowance for profit. It is no answer to say, as appellants do, that even with the salary appraisals excluded, the compilation shows that under the Secretary's rates, appellants as a whole would have suffered financial loss. Quite apart from the appraised values of owners' services, which are hypothetical and not actual expenses, the cost figures used by appellants include expenditures which the Secretary has found to be unreasonable and excessive. For example, some of appellants whose costs are used in this computation make expenditures of from $3.00 to $5.00 per carlot for the purpose of getting and maintaining business.[58] Appellants' Exhibit 10 (R. 295), which they assert shows that the elimination of firms handling a small volume of livestock would not affect their computations as to the profits which would be realized under the Secretary's rates (appellants' brief, p. 121), is subject to the same criticism. The cost figures used in Exhibit 10 are based on the excessive hypothetical appraisals of owners' salaries, as well as on excessive and unreasonable expenditures for the purpose of getting and maintaining business. Compilations which reflect such excessive and unnecessary expenditures afford no basis for an attack upon the

[58] See page 85, *supra*.

reasonableness of the rates prescribed by the Secretary nor support for the claim that they are confiscatory.

Some of appellants' exhibits discredit themselves by the extreme showing which they undertake to make. For example, the computations of losses made in Exhibit 2 which are based on costs which include the appraised value of the services of owners, show that even under the existing rates appellants have an aggregate loss for the years 1932, 1933, and 1934 (R. 273). Even when the hypothetical appraised salaries are eliminated from costs, the Exhibit shows that a large number of firms have operated at a loss under the present rates, thus indicating that the costs of these firms are excessive. Exhibit 8 (R. 289) also purports to show that even under the present rates appellants suffered an aggregate loss in 1932. To such proof the language of this Court in *Dayton Power & Light Co.* v. *Public Utilities Commission of Ohio,* 292 U. S. 290, may well be applied. There a utility in objecting to a rate-making order presented evidence tending to show that it had been operating in the past, without protest, under confiscatory rates. This Court stated (p. 312):

> The argument proves too much: the valuations are discredited by the teachings of experience. Men do not transact business without protest at confiscatory rates, at all events in the absence of extraordinary circumstances making submission to the loss

> expedient. If such circumstances exist, the appellant has not proved them. Nothing in the record lays the basis for a belief that the natural gas business in Ohio is unable to pay its way. That being so, what the public utility has done belies what it has said. We shall hardly go astray if we prefer the test of conduct.

See also *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151, 163.[59]

Finally, it should be noted that the argument with respect to confiscation made by appellants and the evidence which they offer in support thereof are similar to the arguments and the evidence offered by the market agencies in *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420. There it was alleged that the rates prescribed by the Secretary did not "provide sufficient remuneration to repay the market agencies for the expenses incurred by them in rendering the services, and a

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[59] In *Union Stockyards Co. of Omaha, Ltd.* v. *United States*, 9 F. Supp. 864, the Court said with respect to evidence with a similar tendency (p. 883):

"Plaintiff's testimony is to the effect that its proper ties are worth some $15,000,000 and its net operating income derived from the rates it had fixed for itself was some $850,000, so that on the showing it would appear to have been voluntarily operating at a rate far below what it asserts to be a confiscatory rate. Likewise, it contends that it must have a reserve for depreciation, maintenance, and repairs far in excess of any reserve which it has ever set up on its own account. We think the testimony, by proving too much, overshoots the mark and must fail of the intended effect."

reasonable and just compensation for their own services, and the enforcement of the said order will have the effect of depriving the said market agencies, including these petitioners, of their property without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States" (*Tagg Bros. & Moorhead* v. *United States,* R. 5–6). In support of this allegation, the market agencies introduced evidence similar to the evidence upon which appellants rely. The nature of this evidence is indicated by the following passage from the opinion of the District Court in that case (*Tagg Bros. & Moorhead* v. *United States,* 29 F. (2d) 750, 758):

> The accountants for the plaintiffs made up a number of sheets, which disclosed the amount of business done by each agency in 1925, of cost to each for salesmen's services, for salaries, for other help, for advertising, etc.; in fact, the expenses incurred by each firm in conducting its business during the year 1925; also sheets showing the profits and loss to each firm during that year, if the rates prescribed by the Secretary should have been applied. On that basis many of them would have suffered a loss, and but few of them would have made substantial profits. But the outlays for expenses included in those sheets were in many respects items which the Secretary found to be unnecessary in carrying on the business and excessive.

Despite these contentions and the evidence offered to support them, the District Court held in that case that the rates prescribed by the Secretary were not unreasonably low or confiscatory, and this Court affirmed that holding, saying (280 U. S. 420, 445):

> This conclusion of the lower court conforms, in our opinion, to the evidence.

V

THE SECRETARY PROPERLY DENIED THE PETITIONS FOR REHEARING

On February 7, 1934, thirty days after the entry of the Secretary's order, appellants filed with the Secretary a petition for rehearing, the allegations of which are summarized by appellants in their petition and complaint as follows (R. 9):

> * * * that the schedule of rates and charges prescribed in the Secretary's Order would cause reductions in revenues which would make it impossible for the petitioners to pay necessary operating expenses; that there have been increases in expenses resulting from the operation of the National Recovery Act and the Agricultural Adjustment Act; that the schedule of rates and charges as prescribed in the said Order of January 8, 1934, were not related to the cost of rendering service with respect to the different species and classifications thereof; that the petitioners desired to show that draft is a more equitable basis than consignment for the assessment of rates and

charges; that the petitioners desired to show that the prescribed rates were not consistent with the level of cost or the trend of cost; that under the rates and charges in effect during 1933 substantially all of the petitioners had operated at a loss; that the rates prescribed by said order would not permit the restoring of salaries to the levels desired by the administration; and that the rates prescribed would necessitate throwing out of employment a large number of people; that the petitioners desired to prove that the Chicago market and the petitioners were efficient in the handling and selling of live stock in 1933 and 1934; that the conditions which prevailed during 1933 constituted a greater change than had occurred in any twelve months period prior thereto.

On February 12, 1934, representatives of the Solicitor's office of the Department of Agriculture filed a reply to the petition for rehearing, setting forth reasons why the petition for rehearing should be denied (R. 191). On the same date appellants submitted certain data in support of the allegations of the petition (R. 191). After consideration of all matters submitted to him in connection with the petition for rehearing, the Secretary entered a supplemental order on March 12, 1934, denying the petition for rehearing and providing for certain changes in the schedule of maximum rates and charges provided in the previous order of January 8, 1934 (R. 191). The changes provided in the sup-

plemental order were all increases, and they related to light weight cattle, medium weight cattle, heavy weight cattle, hogs, and sheep (R. 186–188, 192–194). The effective dates of the order of January 8, 1934, and the supplemental order of March 12, 1934, were postponed at appellants' request until April 20, 1934, by successive orders of the Secretary (R. 10).

On April 9, 1934, less than a month after the entry of the supplemental order, appellants' filed an amended petition for rehearing, the allegations of which are summarized by appellants in their petition and complaint, as follows (R. 10):

> * * * That the rates and charges prescribed in said Order and said Supplemental Order would create a net reduction of twenty-five percent of gross income as compared with income derived from the tariff rates and charges of 1923 declared to be unreasonable; that such reduction in income would be confiscatory for the reason, among others, that the income to be produced by the schedules of said Order and said Supplemental Order would not produce gross income sufficient to pay the usual and necessary costs of doing business; that the said Order and said Supplemental Order and the schedules thereof were based on findings for the years 1931 and 1932, while during the years 1933 and 1934 decided and profound

> economic changes have occurred adversely affecting the market agencies at Chicago; that the record and figures for the years 1931 and 1932 afforded no sufficient basis for the orders and schedules of the Secretary; that legislation of Congress and the rulings and activities of Administrative agencies of the Government, particularly the Agricultural Adjustment Administration, brought about drastic reduction in the production and marketing of live stock, particularly hogs.

The amended petition for rehearing was denied by the Secretary on April 12, 1934 (R. 10).

Appellants contend that the denials of these petitions for rehearing were arbitrary (appellants' brief, pp. 96–108).

In considering this point and weighing appellants' contentions, the chronology of these proceedings is pertinent. It will be recalled that the hearing before the examiner designated by the Secretary commenced in Chicago on May 15, 1933, and continued from then until August 18, 1933, at which time it was adjourned to be resumed in Washington (R. 8). Further hearings for the taking of testimony were held at Washington, terminating finally on November 7, 1933 (R. 9). Full opportunity was accorded at all times to counsel for appellants for examination and cross-examination of witnesses and introduction of exhibits. On December 13, 1933, the matter was argued orally before the Secretary of Agriculture (R. 9).

On January 8, 1934, less than four weeks after the case was finally submitted to the Secretary on oral argument, the original order was entered providing that the new schedule of maximum rates should become effective in thirty days, or on February 7, 1934 (R. 188–189).

There are probably very few instances in the annals of rate making in which a rate-making body proceeded as expeditiously after the submission of the case as did the Secretary of Agriculture in the instant proceeding. The Secretary's order was entered only two months and one day from the date on which the last testimony was taken and less than four weeks after the oral argument. It would, indeed, have been extraordinary if changes of such a sweeping character had occurred in the short space of a month or two as to have required the Secretary as a matter of law to have reopened the case. The same may also be said with almost equal emphasis of the amended petition for rehearing filed April 9, 1934. A presumption may certainly be indulged that even within a space of five months (November, 1933, to April, 1934) no such sweeping economic changes could have occurred as were found by this Court to have occurred during the period (1928 to 1930) covered by the petition for rehearing involved in the case of *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 284 U. S. 248.

The obvious fact is that most of the allegations made in the petitions for rehearing related to matters on which evidence was or could have been in-

troduced at the lengthy hearings before the Secretary in 1933. The National Industrial Recovery Act and the Agricultural Adjustment Act had both been enacted long before the close of the hearings in November 1933, and appellants could have offered in evidence at the hearings in 1933 speculations as to the possible effect on their businesses of these statutes just as readily as they could have offered such matters in evidence had a rehearing been granted early in 1934. Appellants were also free to introduce at the hearings in 1933 all the evidence that they desired with respect to the draft being a more equitable basis than the consignment for the assessment of rates and charges, and with respect to the reduction in the receipts of live stock during the year 1933. The most that could have been added to the record had a rehearing been granted early in 1934 would have been facts with respect to the receipts and other market experience of several additional months. Appellants certainly were not entitled to a rehearing merely to permit them to put in evidence which might have been offered at the hearing prior to November 7, 1933, and the allegations do not furnish any basis for a belief that any facts occurred between November 7, 1933, and the dates of the petitions for rehearing which as a matter of law appellants were entitled to require the Secretary to consider.

As for the allegations in the petitions for rehearing that the rates and charges prescribed would be

confiscatory, it is submitted that none of the facts alleged in the petitions for rehearing would, if proved to be true, establish as a matter of law that the prescribed maximum rates were confiscatory. In view of the above, it is submitted that it was not an abuse of discretion for the Secretary to deny the petitions for rehearing.

Notwithstanding the obvious failure of the petitions for rehearing to allege facts requiring a rehearing, the Secretary nevertheless gave appellants' requests careful consideration. The effective date of the original order was twice postponed while the first petition for rehearing was under consideration (R. 190). Moreover, after consideration of the first petition for rehearing the Secretary made an adjustment involving an increase of the maximum rates prescribed which, as applied to the business of the year 1932, would have had the effect of increasing appellants' income under the prescribed rates $160,000. Including the additional revenue resulting from this increase granted by the supplemental order of March 12, 1934, the rates as a whole would have produced as applied to the business of 1932 a margin of nearly half a million dollars over and above the reasonable costs and profits found by the Secretary (R. 1179). Thus a considerable margin of protection has been provided against any incidental errors which might have occurred in the determination of maximum reasonable rates and against injury which might otherwise

have resulted to appellants through the operation of normal fluctuations in economic conditions.

The decisions of this Court do not require rehearings as a matter of course upon the presentation to rate-making bodies of petitions alleging some changes in economic conditions, or speculations regarding future conditions. In *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 284 U. S. 248, this Court held that an order of the Interstate Commerce Commission should have been enjoined by the lower court upon a showing that a petition for rehearing (alleging radically different facts from those existing when the record before the Commission was closed) had been denied. In that case the record before the Commission had been closed in September 1928; a petition for rehearing had been presented in September 1930, and a second petition for rehearing had been presented in February 1931. Thus a period of two years had elapsed between the closing of the record and the filing of the first petition, two years which saw a change from the height of prosperity to the depth of depression. This Court, in holding that the carriers were entitled to a rehearing, stated (p. 261) that the record before the Commission "pertains to a different economic era and furnishes no adequate criterion of present requirements", and that (p. 262) the petitions did not present "the usual case of possible fluctuating conditions, but of a changed economic level." Obviously, that case cannot apply here.

If there were any doubt about the inapplicability of that case, it would be dispelled by the case of *United States* v. *Northern Pacific Railway*, 288 U. S. 490. In that case the Circuit Court of Appeals (on a record which showed that the record before the Interstate Commerce Commission had been closed on January 15, 1930, and a petition for reopening had been filed with the Commission on February 3, 1932) held that the decision in the *Santa Fe* case required a reopening, and that, because of the Commission's denial of the petition to reopen, the order could not be sustained. In reversing that judgment, this Court said (at page 494):

> The decision in the *Santa Fe* case is not to be extended to require a rehearing in every rate case for changed economic conditions, however insignificant the effect of the order on carrier revenue. The rule announced, while intended to safeguard substantial rights of the railroads, may not be invoked where its application would disenable the Commission to protect the interest of the public.
>
> Though the order substantially reduced the carriers' revenues, we do not consider the merits of the application for rehearing, as we think the carriers' lack of diligency in bringing this matter to the Commission's attention deprived them of any equity to complain of the refusal of their petition. They sat silent and took the chance of a

> favorable decision on the record as made. They should not be permitted to reopen the case for the introduction of evidence long available and susceptible of production months before the Commission acted. The denial of a rehearing, in view of this delay, was not such an abuse of discretion as would warrant setting aside the order.

It is submitted that under the holding of this Court in the *Northern Pacific* case, the Secretary was clearly justified in denying appellants' petitions for rehearing.[60]

Appellants in their brief (p. 98) quote from the opinion of this Court in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 444, to the effect that the Secretary has the power and the duty to modify his order if new evidence warrants the change. The government is wholly in accord with this pronouncement and welcomes its application to the present case inasmuch as the two petitions for re-

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[60] Petitions for rehearing somewhat similar to the ones involved here have been made in other rate proceedings recently held under the Packers and Stockyards Act, and have been denied by the Secretary. In four of these proceedings the rate orders have been challenged in district courts on the ground *inter alia* that it was error to deny the petitions for rehearing. In each case, however, the order of the Secretary has been sustained by the district court, and the denial of the petition for rehearing has, in each case, been expressly upheld. *Union Stock Yards Company of Omaha* v. *United States*, 9 F. Supp. 864, 871, 873; *Morgan* v. *United States*, 8 F. Supp. 766; *St. Joseph Stock Yards Co.* v. *United States*, 11 F. Supp. 322, 324–325; *American Commission Co.* v. *United States*, 11 F. Supp. 965, 972.

hearing allege no substantial facts which were unavailable to appellants at the hearing before the Secretary. Nothing in those petitions constitutes "new evidence" within the meaning of this Court's pronouncement in the *Tagg Bros. & Moorhead* case.

Appellants refer (appellants' brief, pp. 99–107) to certain publications of the Department of Agriculture with reference to the Agricultural Adjustment program and its effect upon the livestock supply of the country. None of the excerpts quoted has any bearing upon the question of whether the Secretary arbitrarily denied the petitions for rehearing. In the first place the Secretary's action in denying the petitions for rehearing must be judged as of the date of the denials. The question is whether or not the Secretary's action was arbitrary in view of the allegations of the petitions for rehearing, and not whether certain things may or may not have happened subsequently which might have required the granting of later petitions for rehearing which might have been (but were not) presented to the Secretary.

These excerpts which appellants have quoted from publications of the Department of Agriculture for the most part relate to the supply of livestock during the years 1934 and 1935. They refer to facts which had not occurred and could not be foreseen at the time the petitions for rehearing were presented.

But even if the matters quoted from the Department of Agriculture publications are given full

consideration, they have no bearing upon the lawfulness of the Secretary's orders. Not a fact appears from the quoted excerpts tending to show increased unit costs for handling livestock at the Chicago stockyards. It is submitted that generalized statements about livestock trends, such as appellants have referred to at pages 99 to 107 in their brief, even though coming from official publications, have no bearing whatsoever upon the question of the reasonableness of the prescribed rates for the business of the Chicago market agencies.

But even if appellants were able to refer to pertinent facts outside the record which have occurred *subsequent* to April 9, 1934 (the date the last petition for rehearing was presented), such facts on the present record would not constitute reasons for enjoining the enforcement of the prescribed rates, because as to such facts (if any such did exist) appellants have never petitioned for a rehearing. While the government emphatically contends that nothing which appellants have argued establishes, or even tends to establish, the unreasonableness of the prescribed rates, nevertheless if appellants were able to point to any drastic changes in economic conditions that they might contend have occurred in the latter part of 1934 or in 1935, reference to such facts would not be pertinent in judging the fairness or lawfulness of the Secretary's denial of the petitions for rehearing filed early in 1934. Any facts which may have oc-

curred subsequently are wholly immaterial in this proceeding. Appellants have never filed with the Secretary of Agriculture a petition for rehearing based upon any facts alleged to have occurred since April 9, 1934. If facts have occurred since that date which entitle appellants to a rehearing, an administrative remedy is available.

It is respectfully submitted that the Secretary was fully warranted in denying both petitions for rehearing and that such denials were not arbitrary and did not constitute an abuse of discretion.

CONCLUSION

It is respectfully submitted that the decree of the District Court should be affirmed.

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APRIL 1936.

APPENDIX A

Title III of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159 (7 U. S. C., Title 7, Secs. 181–229) provides in part as follows:

SEC. 301. When used in this Act—

(a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;

(b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock;

(c) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyard services; and

(d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.

* * * * *

SEC. 304. It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request without discrimination, reasonable stockyard services at such stockyard * * *.

SEC. 305. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or dis-

criminatory rate or charge is prohibited and declared to be unlawful.

* * * * *

SEC. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed.

* * * * *

SEC. 313. Except as otherwise provided in this Act, all orders of the Secretary under this title, other than orders for the payment

of money, shall take effect within such reasonable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction.

* * * * *

SEC. 315. If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If, after hearing, the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same.

SEC. 316. For the purposes of this title, the provisions of all laws relating to the suspending or restraining the enfrocement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title.

APPENDIX B

COMPARISON OF MARGIN OVER COSTS PRODUCED BY RATES FIXED IN *TAGG BROS. & MOORHEAD* v. *UNITED STATES* WITH THE MARGIN PRODUCED BY THE RATES PRESCRIBED BY THE SECRETARY IN THIS CASE

	Omaha	Chicago
Costs found reasonable by Secretary:		
Cattle and calves	[1] $.49074	[2] $.4297
Hogs	[1] .14071	[2] .1323
Sheep	[1] .05800	[2] .0485
Test Year	(1925)	(1932)
Volume in car lot equivalents, test year	[3] 128,619	[4] 148,030
Total costs for market for test years	[5] $1,544,683	[6] $1,714,241
Total revenues produced by Secretary's rates	[7] 1,983,433	[8] 2,374,338
Total margin between cost and income produced by rates	$438,750	$660,097
Margin per car	$3.41	$4.46

[1] These per-head figures are arrived at by dividing the per-car cost as found by the Secretary (*Tagg Bros.*, etc., R. 36) by the number of head of each species equivalent to a carload, namely, by 27 cattle, 70 hogs, and 225 sheep. (*Tagg Bros.*, etc., R. 33.)

[2] (R. 180.)

[3] (*Tagg Bros.*, etc., R. 828, 829.)

[4] Gov. Ex. 49, 186.

[5] Arrived at by applying against the number of cars of each species received in 1925 the costs found reasonable by the Secretary:

71,422 cars of cattle (*Tagg Bros.*, etc., R. 828, 829) @ $13.25 (*Tagg Bros.*, etc., R. 36)		$946,342
46,275 cars of hogs (*Tagg Bros.*, etc., R. 828, 829) @ 9.85 (*Tagg Bros.*, etc., R. 36)		455,809
10,922 cars of sheep (*Tagg Bros.*, etc., R. 828, 829) @ 13.05 (*Tagg Bros.*, etc., R. 36)		142,532
128,619	Total	$1,544,683

[6] Cooperative volume and country volume out.

2,502,596 head of cattle (Gov. Ex. 49, 186) @ $.4297 (R. 180)	$1,075,365.50
3,883,537 head of hogs (Gov. Ex. 49, 186) @ $.1323 (R. 180)	513,791.95
2,579,048 head of sheep (Gov. Ex. 49, 186) @ $.0485 (R. 180)	125,083.83
Total	$1,714,241.28

[7] (*Tagg Bros.*, etc., R. following 798, Ex. 105.)

[8] It is stipulated (R. 1179) that Secretary's order will produce for the market as a whole $493,941 more than the cost and profit. This amount, $493,941, added to $1,880,396.80, the cost and profit, gives $2,374,337.80. The total cost and profit is arrived at as follows:

2,502,596 head of cattle (see above) @ $.4687 (R. 180)	$1,172,966.75
3,883,537 head of hogs (see above) @ $.1463 (R. 180)	568,161.46
2,579,048 head of sheep (see above) @ $.0540 (R. 180)	139,268.59
Total cost and profit as per finding	$1,880,396.80

1315

It should be noted that in *Tagg Bros. & Moorhead* v. *United States* the Secretary made no findings as to reasonable profits per unit. He made findings as to reasonable unit costs and then fixed rates high enough to cover those unit costs and to provide a margin for profit (*Tagg Bros.* etc., R. 23–42).

In the instant case the Secretary made a finding, not only as to reasonable unit costs but also as to reasonable profits per unit (R. 178–181), and then fixed rates sufficient to produce in the test year a margin of approximately $500,000 over and above the costs and profits found to be reasonable (R. 1179).

APPENDIX C

UNIT COSTS AND PROFITS FOUND TO BE REASONABLE BY THE SECRETARY OF AGRICULTURE

	Cattle and Calves	Hogs	Sheep
Salesmanship	$.1667	$.0414	$.0148
Yarding Salaries	.0725	.0280	.0085
Yarding Expenses	.0075	.0004	.0002
Office Salaries	.0750	.0250	.0099
Office Expenses	.0375	.0150	.0055
Business Getting and Maintaining	.0390	.0120	.0050
Administrative and General Expenses	.0150	.0055	.0030
Insurance	.0085	.0025	.0015
Interest	.0080	.0025	.0010
Total cost	.4297	.1323	.0485
Profit:			
To cover management	.0350	.0125	.0050
To cover uninsurable risks	.0040	.0015	.0005
Total reasonable cost and reasonable profit	.4687	.1463	.0540

U. S. GOVERNMENT PRINTING OFFICE: 1936

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 655

C. H. ACKER, ET AL.,

Appellants,

vs.

UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

PETITION FOR REHEARING.

GEO. I. HAIGHT,
Counsel for Petitioners.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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PETITION FOR REHEARING.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now come the Appellants and present this, their petition for a rehearing of the above entitled cause, and, in support thereof, respectfully show:

This cause was decided May 18, 1936. It involves maximum commission rates fixed by the Secretary of Agriculture and to be charged by certain market agencies at the Union Stock Yards, Chicago, Illinois, for the buying and selling of livestock.

1. The Court states in its opinion that

"the Secretary was not bound to, and indeed he could not, adopt any one agency's costs or an average of the

costs of all of them; to do so would be to leave out of consideration relative size, relative volume, and relative efficiency of individual agencies."

This is true; but it does not seem to meet the problem presented by the record. In addition to the inequalities between agencies mentioned, there are many other inequalities,—such as differences in number of head of livestock in consignments and in drafts. There are differences in many other factors. The question is not one of average costs, though average costs may be a helpful tool of inquiry. The question is: Can a rate be fair when, with no proof of inefficiency as to any market agency, each with its own distinctive particular experience, the Secretary's cost allowance for each species is lower than that of *any* agency save as now noted?

In respect to cattle and calves, the Secretary's total cost allowance per head is $.4297. According to the Secretary's own determinations of actual cost shown by Government Exhibit No. 49, pages 7 to 9, all agencies but four had higher expenses for the year considered,—that is, 1932. For swine, the Secretary's allowance of total costs per head is $.1323. The same Government Exhibit, pages 10 to 12, shows that all but three firms had higher expenses. In respect to sheep, the Secretary's allowed cost is $.0485 per head. The same Government Exhibit, pages 13 to 15, shows that no firm attained this low cost. The four cattle firms and the three among the firms dealing in swine, have been so negligible in the particular species that it can be fairly said that no firm reached the low total per head cost fixed by the Secretary—and all of this on the Secretary's own showing as to the actual cost, leaving out facts proved by the Appellants that make the actual costs even higher. Thus it is clear that whether or not the Secretary should have taken average total cost per head of a single firm, of a selected plurality of firms, or all firms,—and quite

irrespective of any method or plurality of methods that might have been employed—*he should not have disregarded the undisputed facts respecting actual costs as to every firm at the Chicago Union Stock Yards.*

2. The most important item of costs is salesmen's salaries. The Court's opinion states that—

> "The attack upon the allowance for salesmen's salaries is bottomed on the fact that the Secretary refused to adopt an average of salaries heretofore paid. He was not required so to do. What is a typical salesman's performance, and a fair recompense for it, is a matter of judgment based upon all the facts."

The attack is bottomed deeper than this. It is not merely a question of averages. The Secretary's "informed judgment" should, of course, be grounded on facts. The Secretary fixed a potential performance of selling cattle and calves at 1,000 cars per annum per salesman. In 1932, of more than one hundred firms selling cattle and calves, only two reached that average. In respect to swine, the Secretary's imaginary salesman was required to sell 1060 cars per year. Not a single salesman attained this, in fact. The Secretary's postulated sheep salesman was required to sell 1035 carloads per year. Only two attained this, in fact. The two firms selling cattle and calves reaching the Secretary's demand as to quantity sold, had large consignments, large drafts and few truck deliveries. On these facts can the Secretary's ideal sales performance be justified? If it were a question of averages, the postulated salesman's performance as to numbers sold must be two and one-half times that of actuality, respecting cattle; two and three-quarters times, respecting hogs; and over two times respecting sheep. But, of course, the question of average performance is not determinative. The fact that the real salesmen who are not shown to be dishonest, slackers or inefficient (the contrary appears) failed to attain the Secretary's ideal, is the important consideration. The Secre-

tary associated these postulated performances of ideal salesmen with certain salaries. The salaries were not based on any proved experience. It is no answer to say that the Secretary's disregard of simple arithmetic is explainable as "the exercise of judgment." For cattle salesmen these associated salaries fixed by the Secretary were $4500 per annum; for swine, $3600 per annum; and for sheep, $4,000 per annum. It is pure fiat to say that competent salesmen to be trusted with their important work are obtainable at such wages on the basis of actual selling performance as to numbers (by no means a highly important factor), to say nothing of associating such salaries with the selling of numbers greatly multiplied. Numbers, of course, are easily attainable by one not really giving service and acting as a mere acceptor of any offer made by packers or other buyers.

The situation in the instant case is quite different from that of the *Tagg* case. If the Court's action there in fixing salesmen's salaries on the basis of the highest salaries in fact paid can be said to be a principle, then the Secretary's action here, both in respect to salaries and associated postulated performance in numbers, cannot be said to be an application of the same principle.

In the foregoing we have ignored the fact that many salesmen owners receive no salaries. We have ignored the fact that fifty-six of the one hundred and ninety-three owners did not carry themselves on the books at any salary, and that some other owners had nominal salaries or drawing accounts. Appellants, of course, do not propose, and have not proposed, that the owner who receives fair compensation for services performed by him should receive more through choice of names for that compensation. The Secretary should have, of course, refused "to load the business with a cost having no relation to actualities"; but he also should have refused to disregard the fact that in

so many instances owner salesmen were receiving little or no compensation in any form. It was an actuality that these men did their work and that they were not paid for it—and not a mere hypothesis. However, assuming, for the sake of argument, that the owner salesmen who did not credit themselves on their books with reasonable salesmen salaries for work done, are unworthy of compensation, the Secretary's action still is factually ungrounded, as we have endeavored to point out. Further, in respect to salesmen's salaries, the Secretary did recognize in words that facts count. On page 137 of the record, among his findings, the Secretary said:

> "The prices at which such services are bought and sold are generally regarded as the proper test to be applied."

This test, however, received no more than lip service. Of course, the right of the employers and the employee salesmen to bargain for their hire, individually or collectively, is fundamental. True, Acts passed under the Interstate Commerce Clause and public interest have their bearings upon this right; but here there is nothing to indicate that salesmen as efficient, experienced, skilled and as trusted and trustworthy, with the interests of growers and shippers of livestock, can be procured for less. That salesmen with the training and possessing the qualifications that the Secretary sets forth on page 100 of the record, can be procured at a lesser cost than the market agencies are required to meet in bargaining for services, individually and collectively, does not appear. Further, the announced test—that is, the prices at which such services are bought and sold, where no fraud or unfairness appears, would seem to be the only practical feasible one. Compare *Adkins* v. *Children's Hospital*, 261 U. S. 525, 560.

3. The opinion states:

> "The amended petition was filed about three months after the original order was issued. It is inconceivable

> that economic conditions had so altered in this brief period as to demonstrate that the new schedule of rates, if just when promulgated, had become unjust and oppressive."

Petitioners' Exhibit 12 (Senate Document 140, 73 Cong. Second Session, Emergency Hog Marketing Program, p. 40) issued one week after the entry of the Secretary's Order shows that within a short space of time prior to January 15, 1934, when the publication was issued, 6,410,866 pigs, sows, and inedible little pigs had been destroyed as a result of the emergency hog marketing program. The Secretary knew the extent of the destruction of the commodities in which the petitioners' deal; but the petitioners had no means of knowing the extent of the destruction until the publication of the Senate document referred to.

The same reference, page 42, states:

> "the sales of each sow * * * removed from fall farrowings approximately five pigs which, under normal circumstances, are fed to an average market weight of about 225 pounds".

It is further stated that the reduction up to January 15, 1934, as a result of the program was in the neighborhood of 1,000,000,000 to 1,200,000,000 pounds.

With the reduction in the supply of livestock, the commission men knew the results which would immediately follow; that they did follow is shown by the petitioners' exhibits in the District Court (R. 259-296). Even now the aggregate supply of meat animals is the smallest in more than 30 years (Misc. Publication No. 235, U. S. Department of Agriculture, Nov. 1935, p. 53).

4. On the question of confiscation, it is true that relatively little tangible property is employed in the business. As the Court's opinion states, the Appellants render a personal service. We take it that this affords no distinction from the principles applicable when tangible properties of

large values are embarked in a public service. The right to serve those who will employ them is a property right inherent in the market agencies. The right of the employee to make and enforce contracts is a property right. It would seem that when rates are insufficient to yield the fair value of a service, they are confiscatory and deprive the giver of personal service of property without due process of law, and deny him equal protection of the law. The showing upon this was made in the District Court on final hearing.

From this evidence it appears that without taking into consideration any salary adjustment whether or not the owners drew a salary or made a profit or neither, only 2 firms would have made a profit in 1932 under the Secretary's rates, and only 5 in 1933 (Exhibit 2, R. p. 270 and 272). The evidence of the effect of the Secretary's Order upon the business of the Appellants is found in exhibit form from pages 256 to 292 of the record, and the testimony respecting it at pages 212 to 257. Exhibit 10 (R. p. 295) is particularly pertinent. It shows that even if small volume firms charged by the Secretary to be inefficient, were eliminated from the market and their business distributed without additional costs to the remaining firms, there would be no substantial effect on costs or on profit.

5. The orders of the Secretary apply both to selling charges and buying charges. The only finding made by the Secretary in respect to the costs of buying service is that they may be more or less than the cost of selling (R. Vol. I, p. 181). Upon this general finding the Secretary ordered that the rates for buying live stock shall not be in excess of those for selling like species. Hence there is nothing in the Secretary's findings upon which to base his order of unreasonableness of existing rates for buying; or his order that charges for buying services should not exceed those

for selling. The Court's opinion seems to wholly overlook this.

For the reasons given, it is urged that a rehearing be granted.

Respectfully submitted,

GEO. I. HAIGHT,
Counsel for Petitioners.

I hereby certify that the foregoing petition is presented in good faith and not for delay.

GEO. I. HAIGHT,
Counsel for Petitioners.

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 655

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 30, 1936.

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Mr. Harold Summers, a witness previously called by the Government, returned to the stand and testified as follows:

Direct examination:

(The witness was shown the large map of the stockyards and was asked to give the location of John Clay & Co. cattle pens.)

They are south of the Exchange Building and quite close to that building. I identify the pens as being block 18 on the map—the pens used by John Clay for the handling of butcher cattle. The steer pens in Block A-17, due south of the Exchange Building, at the request of the Examiner I outline on the official copy of the map which is Government Exhibit No. 6.

There are several general cattle divisions in the stockyards; Armour & Co. have one cow buyer; one bull buyer; one calf buyer in the decision that John Clay & Co. butcher pens are located. I do not know whether these buyers also buy in other divisions, and we do not have ordinarily other than the regular buyers assigned to our division from a particular packing company. If I could not sell to the buyers of Armour & Co. assigned to my division, I would not go to seek a buyer for that company from another division. [fol. 456] I might be out 30 days at a time soliciting business but that was not the usual case. Very often I went into the country on Saturday to solicit and sometimes take both Friday and Saturday; go both by automobile and train. Automobile is the best way of travel. It is not always my custom to use an automobile. In soliciting business in the country I use the automobile of John Clay & Co. and would include points probably up to three or four hundred miles.

I would solicit both the shippers that have previously been shipping to John Clay as well as anyone who had not shipped to the firm. I would spend part of my time visiting those who ship to us in the hope that they would continue shipping to us. If the owners of livestock ask us to appraise livestock we do so; and I would say practically all of them make such requests.

I tell the shippers, the owners of live stock, most every time I look at their stock in the country what I think it will bring if they are shipped to market at a certain time.

It is helpful to the shipper. In arriving at the price I think his livestock will bring on the market the day before or two days before and arrive at their value in that way. We would render that service to an owner of cattle whether he had previously shipped to John Clay or not. It is the policy [fol. 457] to get the shipper in on a good market and we put forth every effort to have him on the market when the market is good and his stock will bring the best price. Lots of times shippers ask for advice about the feeding of cattle; if you would change the feed or feed them a little differently than they are being fed their condition improves, and we try to give the owner the best advice possible.

"Q. Now, Mr. Summers, if you had all the butcher stuff that you could sell and handle, do you believe you could sell 2,500 carloads a year?

Mr. O'Bryan: I object to the question.

Mr. Boyd: Wait a minute. Let me get an objection in the record too. The question is "Could you sell 2,500 cars a year?"

Mr. O'Bryan: No, 'if you had all the butcher stuff,'——

Mr. Miles: 'Do you believe you could sell 2,500 carloads in one year.'

Mr. O'Bryan: I object to the question as being too general. That it is supposed to be a hypothetical question and it does not,—it is not based upon any premise at all as to conditions, the law of supply and demand, price, as to whether they are giving the cattle away or not, as to whether or not *if* they are cattle which are desirable for packers, that they are priced at a price which the packers might have a tremendous cutting profit on, and it is a well known factor in the law of supply and demand that anybody can buy cattle, that they can get at a tremendous cutting profit, that there would be no selling effort at all, because they would all be clustered around, like bees at a hive, trying to buy them, and it does not presuppose any factors. It is a general question and nobody in the world could ever figure out whether they could sell any number of given carloads of cattle a year unless all of the factors which were connected with the sale of those cattle — specifically stated.

Mr. Miles (continuing): Mr. Summers, in addition to the question, as framed, I want you to include 'at the market

price.' We are not assuming now that you are giving them away, but selling at the market price.

[fol. 458] Mr. O'Bryan: Well, now, I will add to my objection, then, that unless the market price on a given day is a factor in the question, unless the receipts are a factor, unless the demand is a factor, unless the market on beef is a factor, unless the cutting profit of the packers is a factor, that the question is too general and has no place in this record.

Mr. Boyd: In addition to the objection Mr. O'Bryan has made to the question, I feel that the answer would not be relevant; that the witness is asked to project himself into the future. He, not being a superman, knows nothing of the conditions that will prevail. He has testified that he does not attempt to indicate to shippers the probable state of a market weeks in advance. He is asked to consider what he could do under conditions which he nor no other man may know, that an ideal condition as may be in the mind of the Government counsel could very readily be changed by a few circumstances that have happened at this market; it may happen at any moment, which would make a guess of that variety of little or no value whatever in the determination of a rate that may be assessed against the shipper as a reasonable price for selling livestock on the Chicago market.

Mr. Miles: Mr. Examiner, I told you this morning that I was not going to continue this argument and I am almost going to keep that promise. I will say for the convenience of counsel, I will ask this witness now to consider not that it is in the future, but consider the year 1932, a year that is now past, assuming that you had all the livestock, that is, butcher stuff that you could handle, could you have sold 2,500 cars, in your opinion?

Mr. Boyd: I object to that.

Mr. O'Bryan: I object to that question again unless the day is made certain; unless all of the economic conditions surrounding the day are specifically set forth; that is, what the price was, what the receipts were, what the demand was, what the beef market was, what the cutting profit to the packer was, what the desirability of purchase was; that the question is entirely general and does not mean anything.

Mr. Boyd: Now, let me state it. The objection that I have to the question is that he is asking the witness if he could

have sold the difference between what he did sell and 2,500 cars of cattle during the year. That does not indicate whether he could have done it spread out through the year or in what manner he would have accomplished his work. That presupposes that John Clay and Company will have a larger volume than they actually did have for this man [fol. 459] to sell. It presupposes the condition where it would be evident instead of needing two butcher salesmen they only needed one and I submit that that is not the test as to whether or not John Clay and Company, in the sale of cattle on this market, actually employ, to the best advantage, the employees that were in their service and it is not a test of efficiency at all and for that reason it is not relevant.

The Examiner: Anything further from either counsel?

Mr. Miles: Silence.

The Examiner: Objection overruled.

Mr. Miles (continuing): Is the question clear to you, Mr. Summers?

A. Yes, well, I cannot answer that question satisfactorily because that all depends on market conditions. During the past year lots of times we are lucky to sell one load of cattle a day with the work you put in. You work from 6:30 in the morning until 3 o'clock in the afternoon trying to sell cattle and you just could not get anywhere with it, and I don't see where any man could ever sell anywhere near the amount you state.

Q. Did you finish your answer?

A. Yes, sir.

Q. Will the reporter read the answer, please?

(Whereupon the answer was read.)

Q. And that is the best answer that you can make in your own honest judgment?

A. Yes, it is.

Q. It is true, is it not, Mr. Summers, that while you have stated that on some days a man would be lucky to sell one load that on other days he could sell a great number of loads?

A. Not a great number.

Q. Will you define 'a great number' as you use it?

Mr. O'Bryan: I object to this form of questioning by Government counsel. It is simply an attempt to try and

[fol. 460] fix some figure in the record and the witness has stated the facts. Now, the facts are what this record is after. It is not conjecture. It is not some figure that the witness would pick out of the air.

Mr. Miles: Mr. Examiner——

Mr. O'Bryan: I could give him a guess and give him a figure.

Mr. Miles: I have not the slightest doubt of that, sir.

Mr. O'Bryan: Unless all the conditions are set out, it is perfectly clear whether—I want it understood that by this I am not coaching the witness. This is simply basic on the basis of the law of supply and demand and unless all the factors are given under a certain set of given facts, it is not within the bounds of human conjecture to tell what anybody can or cannot do.

Mr. Miles: That, sir, is not the law, has never been and never will be.

Mr. O'Bryan: Well, it is about time, then, it should be.

(Whereupon the question was read.)

The Examiner: Objection overruled, and the question is: Will you define 'a great number' as you use it?

Mr. Miles (continuing): Did you have some figure in mind or approximately?

Mr. Boyd: I object to the question. Government counsel used 'a great number' also in his question.

Mr. Miles: And Government counsel is not up here as a witness.

Mr. Boyd: Which reminds me of once when a salesman said he could sell a myriad of cattle and someone asked him — a myriad is.

Mr. Miles: If the question is annoying or embarrassing to the witness, he can say so.

Mr. Boyd: It seems to me that is not a proper question to ask this witness as to what he considers is a great number.

[fol. 461] Mr. Miles: We frequently use the expression 'a great number' or a 'large number' and we have something in mind. If the witness does not have any figure in mind, it is perfectly all right to say it.

Mr. Boyd: All right, go ahead and answer.

Mr. O'Bryan: I submit the proper form of question is not what could you sell if all of the surrounding circumstances were ideal, but what, if you know, is the greatest number you have ever sold on any given day, so that coun-

sel for respondents then can on cross examination bring out the circumstances surrounding the possibility of a sale of that amount on a given day?

Mr. Boyd: I submit, Mr. Examiner, that question would be more objectionable to me than those he has already asked. I don't think the most he has sold has anything to do with it. I think what is pertinent is what can he do efficiently and properly in view of the circumstances surrounding John Clay and Company's business. They certainly sell as many as they can get to sell and if they have not enough salesmen, they should get some more. The question is whether or not this salesman is properly using his time and properly does as much work assigned to him as would be reasonably expected that a good salesman would do under a given period of time under the circumstances under which he operates. Beyond that, I think the witness should not be permitted to testify or guess.

Mr. Miles: Mr. Examiner, I will strike the last question asked this witness and make a single observation, that I am delighed that the two opposing counsel should have nullified the entire Packers and Stockyards Act by a single speech, and that is what they have done if their view is to be taken. Now that is all. That is all, Mr. Summers, except for your cross examination.

[fol. 462] Cross-examination:

Q. Was it true during the year 1932 that you found the markets generally bad in the sale of cattle at Chicago?

Mr. Miles: Objected to as absolutely incompetent as to what the condition of the market was.

The Examiner: Objection overruled.

(Whereupon the question was read.)

The Witness: Yes, last year the markets were exceptionally bad.

Mr. Boyd (continuing): It was a rare thing you found fast, snappy markets?

A. Very seldom.

Q. Generally speaking you would call it a buyer's or seller's market?

A. It was a buyer's market, practically all the year.

Q. Has it been your experience that it requires a greater length of time to sell the same kinds and numbers of ani-

mals as it required in the years past, since 1923,—you have been here six years you said, didn't you?

A. Yes, sir.

Q. In the six years you have been here, have you found it more difficult to perform your occupation as cattle salesman with the same number of animals as theretofore?

A. Well, I would say that with the same number of cattle it was harder last year, would take as long a time, may take a little longer time to sell cattle than it has in past years.

Q. That was due to the condition of the market generally?

A. Yes, sir.

Q. And due also to the size of shipments, size of parcels, [fol. 463] increasing number of drafts?

A. Well, on a slow market like we had last——

Q. Just a minute, I don't think you understand what I am getting at. Have you found that the number of animals per owner has been decreasing in recent years?

A. Yes, I would say they have been decreasing.

Q. And is it true that the number of owners increase per animal, for the animals that you sell, that the work is correspondingly increased?

A. The work is correspondingly increased.

Q. Requiring more work, more time per animal than heretofore?

A. Yes, sir.

Q. In other words, the shipments are getting smaller, the parcels are getting smaller?

A. Yes, and there are a lot of truck consignments now where they didn't used to be before, too.

Q. In case of rail shipments, the number of animals per owner has grown smaller and the number of drafts per carload has increased?

A. Yes, they have.

[fol. 464] Mr. W. C. Patterson, a witness called by the Government, testified as follows:

Direct examination:

I live in Glenwood, South of Chicago a little way. Am a cattle salesman in the Chicago Stockyards and am the sole

owner of the firm of John Patterson and Son. I have one employee that I call an extra man; that employee yards his livestock each day; a Mr. Strader sells my hogs and Dan Ryan, a tripper, does extra work for me.

I first came to the Chicago Stockyards along in 1884 and remained in the yards until 1889; was with my father John Patterson. Left in 1889 and went to Iowa and was there until 1904. When on the death of my brother, I came back to Chicago, replacing my brother but my father died in 1916 and I remained in the business and continued the firm. I commenced selling cattle at the Stockyards as a salesman in 1904. I had had some little experience before leaving for Iowa for a couple of years.

I would be classed as one of the smaller operators. In my early days the Patterson firm had been one of the largest operators on the yards. My business has declined during the past two or three years and quite a good many of my customers are out of business. Quite a few of the old timers are dead. I sell all the cattle that are consigned to me.

[fol. 465] Cattle yarded in my alley are sorted, if necessary, watered, fed and gotten ready to show, and when the market opens, sometimes not until ten, sometimes eleven, I start to sell the cattle. During the past two years it has been necessary to sort at least forty per cent of the cattle. I am getting more butcher stuff in the last two years, which requires more sorting, more drafts to weigh, and more time to sell. The market starts later than previously but I do not know the reason. Order buyers and what are called outside buyers as a rule actually begin to buy before the packer buyers get into competition and the market does not seem to go with the snap when the packer buyers begin trading, owing to conditions and how they figure the market will be. There are days when they ride around and with a pretty good run of cattle they will say they just want to pick a few desirables, and will state that they will see you later, and it may be pretty nearly noon before they try to buy the other class of cattle, but you have to be working on them. Actual trading on the market commences about nine o'clock, occasionally at eight or eight thirty.

We take into consideration the market the day before, the run, how the market finished up the day before, and naturally we will watch the actions of the large buyers,

whether they act like they are ready to buy cattle, or want [fol. 466] cattle, or whether they will lay back, and if we figure the market is liable to be lower, or we figure it is liable to be higher, that is the way I figure it, we watch the actions of the buyers as to whether they are coming out to try to buy or whether—of course, the commission man has always got his prices up if he can, you know, the way I always figure.

Occasionally I did country solicitation, but I have not been out for some time. I do no advertising, write letters to prospective customers and to my own trade. My solicitation has been limited during the past year. That solicitation or the lack of it has had an effect upon my business. I think that by neglecting to make trips to the country that my business has shrunk on that account because you come in contact with people or acquaintances which you hadn't seen for some time and you can very often get new shipments by meeting them again.

I clear my business through the Sinclair Commission Company. They handle all the finances and they collect for the cattle and remit for the sales. The Sinclair Company is bonded and guarantees the remittances to my shippers. I do not give a personal bond. The witness stated that the bookkeeping is done by Strader Bros. that they do all of the office work except making out account sales which is done by Mr. Strader.

[fol. 467] Their largest day's business during 1933 was seven carloads; four loads of cattle were sold by Patterson and three loads of hogs were sold by Strader.

There was not much change between the business of 1934 and 1933. Mr. Sinclair gets 25% of all commissions from the Patterson firm and Mr. Strader gets one-half of the commission after deducting the 25% for Mr. Sinclair for clearing.

Frank Marsh sells my sheep when I have any at a charge of 10¢ per head but did not do any of the office work or collecting, simply weighs and sells the sheep. I sell a few seconds.

I do not use any subterfuges in disposing of seconds on the Chicago market.

I cannot approximate the difference in the expense in handling fresh cattle and seconds.

The four loads of cattle which I sold about in February

I believe went over the scales about twelve o'clock. If I had eight loads of the same kind and quality to sell, I could not say whether or not I could sell them because oftimes you can sell four loads and have an additional four loads of the same kind, and you might not get them sold the same day because one buyer had suited his order and the other [fol. 468] fellows would not bid you on the other four for as much as you got for the ones you considered the same cattle, but that is the way the market runs. There is a market for everything that comes to the Chicago yards for some kind of a price during the day. If I had eight loads I could have gotten some price for them if I had been willing to take it, maybe.

As a trading transaction, sellers usually ask more than they think the livestock is worth; that on a hot market there is little trouble in agreeing on the price; other times you will have quite a hard time to get a price, what you consider the market. That it is quite frequently necessary to carry livestock over because the bids are so low that you do not care to sell at the price.

I am a small operator and I do not believe I carried livestock over one day to the next more than two or three times during 1933 and perhaps not more than a dozen times during 1932.

I could have sold more cattle in 1932 than I did with the same organization if I had had the receipts. I probably could have sold two or three times as many cattle if I had received them to sell on commission. The four loads which [fol. 469] were sold on one day in February were straight loads belonging to one owner. I could have sold two more. My firm had sold as high as 25 loads of cattle probably twenty years ago.

Cross-examination:

What my firm sold twenty years ago is not a criterion as to what ought to be sold under market conditions now prevailing.

I have now been shown the account of sales covering the purported four loads sold by me on one day in February, and on examination of the account sales I find it to be a three car shipment. The three cars consisted of 46 head of cattle, weighing 66,740 pounds, that they were all sold to the New York butchers for shipment from Chicago, were

sold at five cents a pound and weighed in two drafts, the additional draft being necessary on account of the weight exceeding the capacity of the scales.

It was the lack of effort on my part in my solicitation that had something to do with the decline in my business in recent years.

Although I am 68 years of age, I am able to perform my duties as a salesman as well as younger men and I had no complaints with reference to the character of service which [fol. 470] I render to my shippers. The service which I render, from the shipper's standpoint, is as good as when I had a larger volume. The service rendered by me to my shippers is not effected by the volume of my business.

Cross-examination:

The amount that I could sell in a day would be guesswork. The law of supply and demand, the price at which the cattle are being offered, all are elements in the time taken to sell cattle. On different days different packers are looking for different types of cattle. On one day you might sell a certain type of cattle to one packer buyer and then on the next day he would not buy the same type of load at any price.

"Q. In your opinion, Mr. Patterson, isn't the distribution of receipts among a great number of commission men a price getting factor by reason of the fact that the buyers have to do more shopping than if the greater part of the day's receipts were assembled in a lesser number of commission men's pens? In other words, does not the fact that the great spread of livestock on the Chicago market make a factor in price getting?

A. I don't quite get you on that.

Q. Well, if all of the day's receipts were in the hands of two or three commission men, there would not be as much shopping necessary by the buyers?

A. No.

Q. And consequently there would not be the price get- [fol. 471] ting factor involved that is involved in great distribution of receipts?

A. Yes, sir.

Q. And that is also true in connection with the great number of buyers on the yards, if you eliminated the buyers on the yards or any part of them to any great extent, that would in turn stifle competition, would it?

A. Yes, sir.

Q. And reflect itself in the prices?

A. Yes, sir."

Redirect examination:

"Q. Mr. Patterson, do you believe that if you doubled the number of commission men on the yards, that that would send up the prices, or buyers would pay higher prices?

Mr. Boyd: I think that question is incompetent, irrelevant and immaterial.

The Examiner: If I understand the witness' testimony, they asked him in substance whether or not having all these numerous sellers on the market did not increase the price, is what I understood was the effect of it, and, if so, the objection is overruled. Read the question.

Mr. Boyd: Do I understand if not, it would be sustained?

The Examiner: Well, I will pass on that when I come to it.

The Witness: Well, all I know, I think that competition is the life of trade.

Mr. Miles: Can you answer the question, Mr. Patterson? Do you think if there were double the number of commission men on the yards, that the price to the farmer would [fol. 472] be higher, that the farmer would get more for his livestock?

The Witness: No.

Q. If there were ten more commission men on the yards, do you believe the farmer would get more for his livestock?

A. No."

All other conditions being equal, I believe I could sell as much livestock as I could ten years ago. I considered myself as good a salesman as other salesmen on the yards. If on the following Monday morning I were to receive ten loads of cattle, I would go out and sell them and not take on any extra help.

Recross examination:

"Q. Mr. Patterson, I think your answer needs some clarification and for that reason I will give you a ten car consignment and ask you if you would be willing to guarantee you could sell them on the Chicago market, under conditions I will relate. We will assume that the market is slow and draggy and that condition has prevailed at this market in innumerable instances during the past year and a half.

A. Yes, sir.

Q. That it is one of the tough types of markets on all classes; that you will receive by carlot a cooperative shipment, the first load to contain bulls, fat steers that would be good to choice, and some prime, that it would contain calves, partly veal and partly stockers, that it would contain cows, a part of which would be canners, part of which [fol. 473] would be cutters, part of which would be springers, and some fat cows, that you would have a couple of fat heifers and a couple of thin heifers, the load would contain also a bob calf and two cripples; that the next load would contain a shipment that would be forwarded from Kansas City, had been shown at Fort Worth, had been shown at Oklahoma City, had been shown at Kansas City, and finally reached you for sale; that load contained 25 cattle that had been fed at Parsons, Texas, and were meal fed, that you had a load that came from Southwestern Texas and contained some dogies, some long horn swamp angels, and that the balance of the ten cars were as much mixed as the cattle that I am talking to you about, do you think you could actually get them sold at the market?

A. That is an awful extreme. I probably could not get rid of all that stuff. It is so mixed up, one man could not handle ten loads of that kind of stuff in a day.

Q. Don't you think that is as reasonable a question to be propounded and ask you to take into consideration those conditions which do prevail at Chicago to your knowledge, as to ask you a general question; if you could sell ten cars of cattle and say you take into consideration anything you know about covering a period of 48 years?

A. No, in that class of stuff, a man could not sell all of that in one day, one man in one day.

Q. Had you considered in making the answer to the ques-

tion that those cattle might contain, by reason of the hypothetical question he put to you, allowing you to take in any conditions that might prevail on this market, just any time of the year, any time during the trading hours any market condition migh prevail, you can conceive and will concede that it would not be possible under markets as they exist today for a salesman to attempt on any day in the future without knowing anything about what the circumstances might be, that to ask a man if he can sell ten cars, would be asking him to project himself into the future and [fol. 474] become a sort of a prophet and would necessarily involve pure guess work on the part of a witness?

A. Yes, sir, one man could not sell ten cars of cattle of that mixed stuff in one day."

Redirect examination:

I have never sold Texas cattle.

Recross-examination:

"Q. Mr. Patterson, regarding the ten loads that you say you had in mind, it is a fact, isn't it, that you could not sell those ten loads of cattle if there was not a demand on a specific day by the buyers for that type of cattle?

A. Well, it is possible, we could have a market; we have had markets or days where there would be almost half or more of the cattle would not be sold because they were not buying anyway, yet, as one market day with another, I am referring to.

"Q. The Government has asked you to make an estimate, or rather you have indicated you thought you could sell ten carloads of cattle, and the question and the answer are in the record. Now in previous cases of this sort, those questions have been asked and varied answers have been made to that type of question. The purpose of procuring an answer is to determine, I believe, the amount of business that might be reasonably expected of the salesmen engaged in the sale of cattle that might be used in fixing a rate for the sale of livestock on this market. After having made that statement, I will ask you to state whether or not you feel that it would be a fair requirement of the Government to expect or to require a salesman engaged in business day in and day out on the Chicago market and the large num- [fol. 475] ber that are so engaged, in order to be efficient salesmen, to approximate the sale of ten cars of cattle in

a day, taking into consideration as well that ten cars per each salesman would be very greatly in excess of the number that ever come to this market?

Mr. Miles: To which the Government objects on many grounds. One of them is the implied assumption that the witness would change or color his testimony to meet the particular situation if he did or did not know. The next is this: the question assumes that there is a requirement made in these orders or by the Government that a salesman sell a particular number in order to be regarded as efficient. I submit that the record is the best evidence, whether there is or is not such a requirement. I submit that no such requirement has ever been made or suggested. Further, counsel has testified, or embraced or included in his question the fact that at other hearings certain testimony has been adduced, and there is no record before this hearing at the present time or any other hearing, and to a question somewhat similar or to a statement made along the same lines by Government counsel, there was very strong objections made. This question, I submit, is improper from so many angles that it is useless to discuss them and, therefore, I object to the question being answered.

Mr. Boyd: And, before the witness answers the question, I want to ask one or two others in connection with the question itself. Do you want to rule on it?

The Examiner: Yes. Objection overruled.

Mr. Boyd: Have you ever before had an explanation made of the methods used by the Government in arriving at what a salesman may be able to do in the performance of his duties and the number of animals or carloads that he may be able to sell in a day?

The Witness: No.

Mr. Boyd (Continuing): So that this whole proceeding and the basis of it was unfamiliar to you at the time you came in here this morning?

A. Yes, sir.

[fol. 476] "Q. And until I made the statement you had no knowledge or idea of the purpose to which the answer might have been made, might have been used?

A. No, sir.

Mr. Boyd: Now, I will ask the reporter to read the question and allow him to answer.

Mr. Miles: Mr. Examiner, I might inject this thought;

that if the witness had no information about, I use the term advisedly, before counselor began his statement, he certainly has no information at the present time and I renew my objection.

The Examiner: Objection overruled. Read the question.

Mr. Miles: That is the very question which the Secretary is to determine, and it is not a proper question, therefore, for the witness.

The Examiner: Objection overruled.

Mr. Boyd: Do you understand the question?

The Witness: Not clearly.

Mr. Boyd: Would it help you to hear it again?

The Witness: I might get it.

The Examiner: All right, read it to him."

(Whereupon the question was read.)

"The Witness: No.

Mr. Boyd: That is all."

Redirect examination:

"Q. Was your answer due to the fact that there were not enough cattle to go around to all the commission firms as they are now organized and the number existing?

A. That there are not enough cattle?

[fol. 477] "Q. Yes.

A. Well, not necessarily, no.

Q. If there were half the commission firms here, you believe you could sell ten a day, don't you?

A. Yes, I might not be able to sell ten if the market condition was, it would be owing to market conditions whether you could or could not, day in and day out. There might be days you could do it easily. I could sell ten a day on some days and on other days you could not.

Q. And some days you might sell 20 loads, would you not?

A. Well, I would not say."

Gene McAdams, a witness, called by the Government, was recalled to the stand, and testified as follows:

Direct examination:

I have previously appeared and testified at this hearing. John Clay & Company has four cattle salesmen, two of

them being steer salesmen and two butcher stuff salesmen. We have a fifth salesman by the name of Johnson who performs services as directed by me as the head salesman. Johnson did some yard work and might buy a load of cattle but in selling and buying he performs as any other buyer or salesman.

If a purchase is made, the purchaser pays a commission for the service rendered.

[fol. 478] If a trader turns livestock over to John Clay & Co. for sale, some of the livestock is sorted, some is not sorted. It would be impossible to approximate how much is sorted or unsorted.

If traders do not tell them to sell seconds the way they are sorted when received, it is optional with the salesman as to what sorts he will make. We can sort them if we like or leave them the way they are if we like. If the trader turns them over to the commission company for sale and says, "Get all the money you can out of them", we would sort them, but, generally, as I said before, they have so few head that they have them sorted, one little lot of cattle, and we go and sell the few head just as they are. If I could get more money out of seconds for the owner, I would re-sort the cattle.

Live stock that is sold by John Clay & Co. on account of traders who are reselling livestock previously purchased on the market, such livestock is delivered into the pens or alleys of John Clay & Co. by the owners of the livestock who are traders.

After they are delivered, they are sold according to the wishes of the owner, or else according to the commission company's judgment.

In discussing whether or not trader cattle, which are [fol. 479] called seconds, are more difficult to sell than fresh cattle that belong to shippers, it would be purely a business transaction in selling either seconds or fresh cattle. It would be up to the buyer as to how he would take either load of cattle. There may be two neighbors having loads of cattle that were pretty nearly identical and they may buy one neighbor's and not the other's. It may be the same with the speculator load and the shipper. It might happen either way, one time in favor of the trader, one time in favor of the farmer. It would be hard to answer which would be the easier to sell or the harder to sell. It

depends entirely upon the buyer, how he buys them, but all livestock is sold to the very best possible advantage.

Some buyers might be a little prejudiced because livestock belonged to a trader which is being resold. My experience indicates that there might be times when the buyers have demonstrated that they might be prejudiced against trader cattle.

I would not say that it took more time to sell seconds than fresh cattle.

I do not know the proportion of butcher stuff and steers that John Clay & Co. sell. I do not know the number of [fol. 480] head which I sold as a steer salesman or the proportion sold by the other steer salesmen, but they both work together on the cattle and they may complete a trade together. I have no distinct impression as to whether I sell more or the other salesman sells more.

Mr. White is the other steer salesman.

All buyers use their own business methods in making purchases. Some buyers make bids as fast as they examine cattle and others do not.

Mr. McAdams was temporarily excused.

F. R. MARSHALL, a witness, called by the Government, testified as follows:

Direct examination:

I reside in Salt Lake City, Utah, and am Secretary of the National Wool Growers' Association. Have held the position since April 1, 1920. Prior to that time was in the U. S. Department of Agriculture in charge of sheep and wool investigations for seven years, and prior to that time was in Agricultural College and experimental work for twelve years, mostly in connection with Animal Husbandry work. The National Wool Growers Association is a voluntary unincorporated organization. It has both association [fol. 481] and individual memberships, but nearly altogether association memberships. It is in effect an affiliation of state associations of the 12 principal Western states known as the range states.

They have some individual memberships but not many. I am part owner of a sheep outfit located in the State of

Washington, which ships from twenty to twenty-four cars per year to the St. Paul and Chicago markets, and I have been interested in the sheep production business since 1922 or 1923. I have attempted to make a considerable study of the sheep markets and of the records and material regarding them; have been frequently in the Chicago yards with our own company's sheep as they are being marketed. I usually make it a point to talk to some of the sheep men in the sheep barns or the office regarding market affairs in general when at Chicago. Our association is interested in all questions involving expenses in marketing sheep, and I have appeared in other hearings before the Secretary in connection with rate proceedings involving commission rates; and have testified at such hearings. I do not remember whether Chicago charges were mentioned at the previous convention of the National Wool Growers' but I have [fol. 482] a distinct recollection that the association should do everything possible to get marketing and other expenses reduced to the lowest feasible point.

I ask indulgence of the Secretary and of his counsel and that of the commission men for my failure to have prepared testimony for this proceeding as the importance of the questions would warrant. The position of the Western Lamb raisers who ship to these terminal markets, speaking generally for them, and particularly as I understand the feeling to be among members of our Association, is that it is vitally necessary that every individual item of expense connected with the production and selling of lambs and wool should be reduced to the lowest possible point that is consistent with efficient and good service. We have had controversies with various branches of the Government over this matter, and, as a single point, aside from this question but illustrative of our pursuit of the policy, we have just last week concluded a series of conferences with the United States Forest Service regarding the grazing charges to which I referred a few moments ago. It might not be inappropriate or improper in a proceeding like this to state that at one time the Secretary of Agriculture retorted to our statements on that line that these charges were immaterial, were minor, did not amount to very much [fol. 483] in our business, but the reply we made to him at that time we make to every other interest, namely, that as good business men, to say nothing of the degree of our

solvency or insolvency, we consider it imperative to have every individual item of expense, whether a large item or a small item, adjusted to the lowest possible point that can be properly paid to those rendering the service. Since 1930 this question has been of special interest and concern to the Western sheep raisers, because, partly of the fact that with very greatly diminished proceeds from their sales of lambs particularly, and also of wool incidentally, it has been impossible to meet their payments, their expenses, interest and payments on their indebtedness, and that has brought out into more than usually strong relief the importance of reducing all items of expense. So far as the range and home expenses are concerned, I think no one will question that the men engaged in this industry have gone fully to the limit. In fact, they have been charged with having been unfair in the reduction of the wages they have made to their labor, and in their purchases of supplies, pasturage and so on in their communities, but they have had no choice in the matter. We realize and appreciate the impract-ability of raising and lowering commission rates according to the value of the livestock, but we find that we are operating under a scale of rates [fol. 484] such as applies to the selling of livestock at our public markets, operating under a scale of rates through a rather long continued period of what we then believed were remunerative prices, and a little better than that at times, then, when we come into a period such as we have been going through since 1929, and particularly since 1930, with market prices reduced by 50 per cent, speaking fairly but broadly, then we think we are within our rights in questioning the propriety of such rates. We recognize the character of the service rendered by the commission men. I presume that it would be superfluous for me to dilate upon that. It strikes us as being something very largely in the nature of personal service. The relationship is quite intimate. There are many long and strong negotiations and I might also say friendships of long and strong standing between these salesmen at the terminal market and their patrons from the Western country to which I am referring. The work of the salesmen in handling this stuff, after it arrives in their hands at the various markets, includes a large responsibility. I am inclined, in my view of the matter, and, as I understand the views of our members,

to especially stress the services of the commission men in their attention to the proper preparation of the sheep for sale, in the sorting, as it may be done or may be required, either before or after the sale, and in the matter of making the collections, getting out prompt returns, [fol. 485] which prompt returns, I am glad to say, are the regular rule. It is, in fact I do not recall in recent years of having heard any complaint of any consequence on that score. We feel, too, that these men have a larger duty to their patrons and their clients in making and getting of the prices for the sheep and lambs which they sell. We are also appreciative of the difficulties under which these men labor in attempting to get the highest possible price for the offerings of their shippers. We feel that rates for these services, as they have been prescribed or determined under the Packers and Stock Yards Act at other markets. and as we understand, they are to be determined for the future at this market, should apply as maximum rates. Being located at various parts of the country, none of us being regularly on the market, of course, we do not assume to be in any position to exactly suggest the proper amount of the rate at any market. I have not seen the audit made by the Government representative from the books of these respondents in this proceeding. I have a few statements to make, however, regarding the procedure and the methods employed by the Secretary in arriving at a determination of a proper rate, judging that method by the language of decisions rendered in previous cases, assuming that the general line of procedure and the bases of determining the rates in this proceeding will be at least mainly like that [fol. 486] which has been followed in the past, I wish to comment on only two points that come to my memory in which I think there is room for argument, in fact, need for some plain statements from the side of the lamb shippers in criticism of the actions of the former Secretaries of Agriculture in arriving at what they have determined to be fair rates.

The first point of criticism on which I wish to speak, as based on former decisions in cases like this, is that of including in the rate, as I understand it, an allowance for expenses to the commission man in getting business and in maintaining the volume of his shipments which he receives to sell. I hope I will not be misunderstood or hope I will

not seem to make it appear that we register objections to the commission men doing anything they deem fit and proper or in their own interests to increase the volume of their business. We have no such objection. That is their concern. I think it would be fair and proper and so recognized by them to state that in this relationship between our men, ourselves as shippers, and these men as salesmen, that it is to all intents and purposes the relationship of employer and employee, and we must look at the amount we pay in the light of what we get for the service rendered. [fol. 487] Now, as I understand the reasoning of the later decisions of the Packers and Stockyards Administration or the Secretary of Agriculture, considerable consideration has been given to the amount of expenses incurred in obtaining business or the shipments to be sold at the prevailing rate. I believe that the audit has been quite complete on those points. I only know it as it has been reported and stated in the language of the final decisions rendered by the Secretary. In fact, Mr. Examiner, in those decisions I find my objections to the inclusion of these expenses of business getting more admirably expressed. In fact, some of the language seems very familiar, some of the terms and phrases.

Some of the terms and phrases. The arguments already meet with my approval. I recall something like this, in substance, that this matter of soliciting, traveling to the West to interview prospective and old shippers and other expense is a matter of getting business away from each other. I cannot cite any particular part of any particular decision at this minute, but my recollection is that it has been cited in those languages, that the expenditure of effort and of money by representatives of the commission houses in ob- [fol. 488] taining business does not vary either up or down the total amount of business.

The volume diverted from one house to another or possibly to some extent from one market to another cannot directly or indirectly be considered as enabling the commission men in general to give more efficient service or to give cheaper service. In fact, I don't think I need to rely, I can't rely, upon the Secretary's decisions for the best support in the world for my views along that line. The trouble I run up against is that when it comes up to the total of the items of expenditure prevailing among these

agencies on the market, we find an item of business getting, I don't know, I guess $1.50 a car.

I don't keep a diary but I have been in Chicago four or five times a year from a half day to a day and one-half. I don't visit every pen or salesman while at Chicago but try to look at what is going on and see their difficulties and see their side of the case, and I know they have difficulties. I know what is meant when they talk about good market days and bad market days. The latter is rather a mild term as the markets go, but as a shipper, I know something about the bad ones. I have seen some good market days but that is a little test upon my memory. I have seen commission [fol. 489] firms and salesmen from commission firms functioning on markets on both good days and bad days trying to sell sheep, and have observed their operations and the fact that they sell them on those days.

"Q. Mr. Marshall, from your experience and observation, what, in your opinion, would be a reasonable performance to expect of a good sheep salesman on the Chicago market, how many carloads in a year?

Mr. Boyd: I object to the question unless the witness can show he has observed the sale of livestock during the course of a year at Chicago or has observed the selling of livestock by livestock commission salesmen of sheep at Chicago, and the witness is qualified properly to answer that question.

Mr. Dagger: I submit, Mr. Examiner, this witness has demonstrated from his testimony that he is fully qualified to answer that question.

Mr. Boyd: I don't think there has been a proper foundation laid for asking it at all.

Mr. Dagger: The witness has stated he is very familiar with the Chicago market, has shipped sheep to the Chicago market, has spent lots of time on the Chicago market, he knows what the market conditions are, he knows good days and bad days on a market.

Mr. Boyd: He says he has been on the market five days a year.

Mr. O'Bryan: Five times, half a day to a day and a half.

Mr. Boyd: Half a day to a day and a half.

Mr. Dagger: Take the ruling on it.

[fol. 490] "The Examiner: Objection overruled.

Mr. Boyd: Note an exception.

The Witness: Well, the best, fairest answer I would care to make to that is that in my experience of being in the sheep pens at this market, particularly when my own company's stuff was being sold, I have known of our salesmen having as many as five cars of sheep from the Triangle Sheep Company, and from 4 to 6 cars each for, I was going to say, two or three, certainly two other clients that I particularly recall. I would say from my own observation that one concern has sold probably around 18 or 19 cars. Now, my recollection also tells me that in the case I have in mind, to speak of, to represent what I observed,——

Mr. Boyd: What date?

The Witness: First part of September, 1931.

Mr. Boyd: So I can procure the account sale and test it further, when did you say it was?

The Witness: Somewhere within the first days of September, 1931. I don't say those were 20 separate cars, requiring 20 separate sales.

Mr. Boyd: Could I find out what firm, please?

The Witness: John Clay & Co. and W. R. Smith, two of them. The number of sales I would not be able to state, probably in the first instance, seven, each of those strings are separate consignments to the packer, then, after the packer sorts out the fats, the feeders remain to be sold, well, there was a funny case at that time, now you speak of it, the packer went through and sorted them, got off the chute and weighed what he took for fats and the rest were [fol. 491] in the pens and the salesmen had to go around and sell part of that sort to the same packer, make another sort and sell the third cut to a feeder.

Mr. Dagger (continuing): Was that all done by one salesman?

A. Well, the actual selling, my recollection was, well, that salesman, I think, the one particular salesman had an assistant, I don't know. I never hang around close when there is a deal going on. I think it is good business to be out of hearing.

Mr. Boyd: Did I understand you to say W. R. Smith and John Clay & Co. and handled by one salesman?

The Witness: Two different firms handled numbers of sheep such as I have spoken of.

Mr. Boyd: On the same day?

The Witness: Yes, sir.

Mr. Boyd: And the same number of consignments by each firm?

The Witness: By each firm. I said I knew they handled up to three consignments amounting to 15 or 16 cars that I recollect of.

Mr. Boyd: One firm, are you speaking of now?

The Witness: Both of them.

Mr. Boyd: What?

The Witness: Both of them.

Mr. Boyd: How many salesmen were there?

The Witness: That is what I was going to answer.

Mr. Boyd: You said there was one salesman, I thought.

The Witness: If you would let me finish my answer to Mr. Dagger, I think you will understand.

[fol. 492] "Mr. Boyd: That may be.

The Witness: I would have finished my answer if you had not interrupted me.

Mr. Boyd: I will interrupt whenever I think it is proper to.

The Witness: I know you well enough to know you will. I said, Mr. Boyd, that there is a head salesman, I was saying, just as I was interrupted, that I do not make it a point, in fact, I make it a point not to try to tag a salesman around when the buyers are in the alley,—whether or not his assistant took any part in making that sale to the packer buyer or of selling the seconds to the packer or the thirds to the feeder, I do not know. I know he was in the alley with the head salesman, giving some help to the yarding and showing of the stuff, but just what part he actually had in the sale, I cannot say.

Mr. Dagger (continuing): Did he dispose of all of them that day, do you know?

A. Yes, sir.

Q. Were those single decks or double decks, do you know?

A. Double decks.

Q. My original question, Mr. Marshall, was whether you could give us your opinion as to what would be a reasonable performance for sheep salesman on an annual basis.

A. I would not undertake to say annually, I could only say daily, Mr. Dagger.

Q. You appreciate the fact that there is a variation in days, of course?

A. Yes, and the daily maximum performance would be determined by the number of consignments in the number of cars. Of course, with all single cars, it would be much more difficult than to sell three or four consignments of five or six cars, all depending upon the character of the market and the amount of sorting, because after the selling, [fol. 493] there is considerable sorting and weighing; in fact, by some representative of the houses which, while not strictly an immediate selling operation, is a part of the duties of the commission men.

Q. In your opinion, was the day to which you refer an unusual day in any way?

A. It was a heavy part of the season, I don't remember the run at that time, but ordinarily there is a pretty heavy run of Western sheep in the yards in early September in any year.

Q. Do you recall the condition of the market that day, whether active or draggy?

A. It was about $2.00 less than what I expected to get.

Q. Does that indicate it was a slow market or a fast market?

A. Slow.

Cross-examination:

I do not know what the actual expense is to the commission firms handling sheep on the Chicago market which is set up by the Government in their unit under the item of business-getting and maintaining.

Cross-examination:

"Q. Do you know, Mr. Marshall, what the actual expense is to the commission firms handling sheep on the Chicago market which is set up by the Government in their audit under the item of business-getting and maintaining?

A. I do not know. I testified that I had not seen this audit at all here, nor heard anything about it.

[fol. 494] "Q. And you do not know what money was actually expended for that purpose?

A. No, sir.

Q. By any of the respondents in this case?

A. No, sir.

Q. Your view is that no allowance should be made in the rate?

A. That should be compelled to be paid by the shipper for that purpose.

Q. You mean that no allowance should be made in the rate for that purpose?

A. Yes, sir.

Q. And you feel that represents the view point of your individual members?

A. I do, yes, sir."

JOSEPH BOURKE, a witness called by the Government testified as follows:

I reside in Chicago, Illinois, and my occupation is office work for Rice Bros. a respondent in this case, doing business at the Union Stock Yards, buying and selling livestock on a commission basis. Rice Bros. also handle clearing operations for other commission men. Speaking of clearing operations for other commission men, Rice Bros. will yard the cattle, take them to their pens, and furnish them with office help for their billing and running of their books and all that, but the practice varies with the different firms cleared.

[fol. 495] Rice Bros. Clear Cochran, Henneberry & Wallace; Abe Burnett & Co; H. L. Dunning and Company; and W. W. Wilson & Company; the latter is purely a financial arrangement; they do none of the yard work or selling for the latter company.

Rice Bros.'s bond covers W. W. Wilson & Co. In the case of Burnett & Co. Rich Bros. yardmen handle all the live stock that come into the yards. Rice Bros. has three yard men. Rice Bros. sells Burnett's hogs and if Mr. Burnett is away, also sells the cattle. The salesmen who sell Rice Bros. hogs also sells the hogs for Burnett. Also does all of Burnett's billing and office work; handles the remittances and the whole transaction clear through, making up report for his monthly report, make checks for freight and yards; makes his report for the Government's annual report, and everything pertaining to the office the same as is done in

the case of Rice Bros. Rice Bros. handle themselves all the calves that Burnett receive, the same with sheep.

During the last two months Mr. Burnett has been home sick in bed and during that period Rice Bros. would handle and sell 100% of the business consigned to Burnett. In the [fol. 496] case of market letters, Burnett has his own stationary, Rice Bros. furnishes the postage, Rice. Bros. stenographers cut the stenciles for market and circular letters; Rice Bros. furnish stenographic help for Burnett and some times gets up his market letters; some time Burnett gets up his own market letters.

Rice Bros. has filed a schedule covering the charges made to Burnett & Co. for the services rendered to the latter company. In the case of Cochran Henneberry and Wallace, Rice Bros. furnish two yard men that are used exclusively on their business and Rice Bros. handles all of their office business; one man is used exclusively on their billing and detail work and figuring on of their tickets and running their collections and deposits. Rice Bros. also supply them with a stenographer. Rice Bros. does no selling for the Cochran firm, they do their own. Rice Bros. bond covers Cochran Henneberry and Wallace. With reference to H. L. Dunning & Co. we do not furnish any outside help for selling or yarding, or any office help outside of one man that looks after their ledger and their remittances; they do just the office work for H. L. Dunning & Co. The Rice Bros. bond covers H. L. Dunning & Company. I am the assistant [fol. 497] to the manager of Rice Bros. I arrive at the office about 7:30 in the morning, make up the list of the days receipts, meet any shippers that happen to be in, getting their branding instructions, and if there are any separate owners to get a list of separate owners, the marks of the different species of the stuff they have. If the shippers are not at the office, there is usually a letter forward giving the information as to the foregoing details. When all the information available is at hand, the office generally gets in touch with the yards so they will handle cattle, calves, hogs and sheep for marks for the different owners and keep them separate. And from Tuesday on in the morning before nine o'clock, the office force generally recaps all the sales of the previous day, balances them out, and then balances collections with sales, sees that all the previous day's business has been properly handled and

then after that about nine o'clock, check up freight charges and yardage for the previous day. The yardage will be for two or three days previous and the freight for the previous day only. After that is checked up, any spare time is used to take care of previous week's reactor cattle where they have a postmortem and get it over by about eleven o'clock. I then go to lunch about eleven thirty, come back and the tickets from different alleys are in the office which are [fol. 498] figured and then billed to the different buyers for purposes of collection; and then we sort them, check the different accounts for the loads to see they check out and then start listing them out on account sales, making account sales for each sale had that day and then go up and get the freight charges to the freight office. If it happens that a short car is received, (a low minimum weight car) we have to take them back to get the freight refigured after the actual weight has been determined in order to complete the bills. If the shipper has not written a letter or come with the shipment, we have to refer to the previous shipments for banking instructions. We continue handling in this way until we are all billed on trucks and carloads; then we write our banking remittances if we can before five thirty so that they can get in to the mail and on the way to the country. We then line up all these banking remittances to get them out to the country and then write the checks for the different sales that are getting checks direct and list those in the cash book. Then we make up the mail and sort the checks up with the different account sales and letters that have been written and mail them out. A short car meant a car loaded at less than the minimum under special rule of the railroad and intended to meet truck competition. Con- [fol. 499] siderable time is used in refigering the freight on so called short cars.

John McNalley is the office manager. Charles Kelly handles the collections and Mr. Flickner handles all the truck buys, live stock arriving by truck, and starts billing on trucks until Mr. Kelly or I have caught up with our work and give them a hand on it, and then I also handle any claims that might be entered and the correspondence to the country. We have a stenographer by the name of Miss Thompson. I do all the billing on the carload stuff and on the cooperative shipments and if Mr. McNally is away, I take his place on the books also. Mr. Flickner makes out

the truck account sales and I make out the carloads. I also shrink all the calves and handle all the cooperatives. It would take from five to seven minutes to write out an account sales for a large car, and probably fifteen minutes more for an l.c.l. car. The company does not have an advertising policy with reference to geographical locations. They correspond with people all over, that they did some advertising in market papers, but I do not know just what papers; that in relation to the Montana business, a man is sent out there during the summer months during their feeding months to make contacts, spends several days out there [fol. 500] traveling through the state, and when he comes back, he compiles a list of the people he has seen and what they have on hand, and they get up what they call a special range cattle letter that they keep these men advised with right along as to how range cattle are starting to sell. This man might stop in Wyoming, either going or returning from Montana, but I do not know the arrangements with reference to solicitation by Rice Bros. The company sends the Drovers Journal which is really a market paper published in Chicago to potential shippers, and the newspaper has to be checked to prevent duplication of names. Rice Bros. has reduced salaries during the past year and during the past two years. My own salary had been reduced twenty per cent, becoming effective in August, 1933.

"Q. It appears, and if I am mistaken in any of this I wish you would correct me then and there, it appears that 70 calves in a single deck will take a commission charge of $22 and 80 calves will also take the same charge. Now, first, is that correct?

A. No, I don't know why there is any difference, why it should be any more coming by rail than by truck if they are both handled exactly the same."

Redirect examination:

"Mr. Miles: Can you tell us about how many account [fol. 501] sales in your judgment you can make out in a day?

Mr. Boyd: I object to that.

Mr. Miles (continuing): Taking the days now as you find them, day in and day out, through the calendar year of 1933.

Mr. Boyd: Now, Mr. Examiner, it is going to require, we find that we are now engaged in inquiring as to how many account sales this witness can make out without giving him specific data as to what may be accounted for on the account of sales. The business arriving at Rice Bros. is undoubtedly the same as with other firms. It is mixed in character. The office work in connection with one shipment may be with fewer animals, may be greater. The witness has testified that he is busy all day long, so busy to do the things that he has to do that he cannot perform some of the other duties that are necessary. To ask this witness to estimate the number of account sales he can make up is just as improper a question as to ask your dentist how many teeth he could fill, or the lawyer how many cases he can try, or any other thing where the conditions covering each transaction vary so greatly as they do in this business.

Mr. Miles: The witness meets the conditions as they are, day in and day out. Maybe one day he can make working at his utmost speed, a lesser number than on some other day he may consider all those factors, and I would be very glad if the witness could tell us about how many account sales, taking conditions as he finds them, he believes he can make out in a day.

The Examiner: Objection overruled.

The Witness: I could not very well give you any number at all until after I would line them and see what they consist of.

[fol. 502] "Mr. Miles (continuing): Do you think you would make out 50 a day?

Same objection overruled.

The Witness: I could not say.

Mr. John Swanson, a witness called by the Government, testified as follows:

Direct examination:

I reside in Chicago, Illinois, and am sheep salesman for John Clay & Co. at the Union Stock Yards, Chicago, and have done actually selling of sheep fourteen years, selling sheep and lambs. Work for John Clay & Co. My first

experience was as a yard man commencing in September, 1907, was a yard man for ten or twelve years; then started to sell odd lots for a year or two and finally was advanced to selling carload lots.

John Clay & Co. employs one additional sheep salesman. The second salesman or assistant salesman sells carloads, odd lots the same as does the witness. The assistant salesman's name is Harry Bourne. It would take from ten to twelve years for a man of average ability, intelligence and industry to make an average sheep salesman. He would have to grade and sort sheep and lambs and learn to sell odd lots for quite some time before he would be fairly well qualified to sell. He should sell odd lots for two or three [fol. 503] years before he becomes sufficiently qualified to sell carload lots. John Clay & Co. employ two yard men in the sheep division who work under my supervision and Mr. Bourne. They yard, help weigh and grade the different lots after the sale is made.

I have known Mr. Bourne for fifteen or sixteen years and before coming to work for John Clay & Co. I was employed by Wilson & Co. Packers, in the sheep house; Mr. Bourne was the sorter and grader for Wilson & Co. the Packer. I believe that Mr. Bourne has been with John Clay & Co. about twelve years. He was a sorter and grader for John Clay for a number of years, and during the past four years has been helping to sell.

I come down at 6:00 or 6:15 in the morning and take my assistant along with me and look at the different lots that we have in the pens at the time. At that hour some of them have been yarded into the selling pens, and some are still in the unloading chutes.

We then go through them and decide which is the best way to sort and grade them up for appearance to a packer [fol. 504] buyer or a feeder buyer, whichever it happens to be, and try to get the live stock shaped up so that it is presentable to the buyer's eye. Then, generally we leave the pen about 7 o'clock. After going through and looking the different loads over, we go to the office at 7 and stay there until probably eight o'clock or eight thirty, sending wires and looking over correspondence that has come in the early morning mail. This correspondence has to do with the stock that is received for sale, and we also inquire as to the market on different shipments that are coming in.

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We receive mail from our other houses, giving us their views as to the markets on the previous days, and we also have inquiries on certain classes of lambs that we are going to have on different days.

[fol. 505] We send telegrams to our different houses giving our views and ideas of the prospects of the market for that day. The market is supposed to open at 8 o'clock, but you can never tell just when it is going to open.

We take a packer buyer or any buyer for that matter into the pen and price a bunch of lambs to them, or sheep, whichever it happens to be; the packer may bid or he may not bid at the time, and walk out. If we have five pens of sheep or lambs to sell, the packer buyer may look at all of them, he may want some of them, or he may bid on all five pens, or he may bid simply on what he wants. The packer buyer may bid on pen No. 1 and then pass up all the others, or he may not bid on pen No. 1 if he thinks your asking price is out of line. It is the custom for the salesman of sheep to price his product before the buyer names his bid. We base our asking price on the supply and demand; the condition of the market the previous day, and try to get a line on the condition of the markets at other points. I use my own judgment as to what I think a bunch of lambs are worth. We generally remember what the price of lambs brought the previous day, we know what the receipts are and will be at six o'clock in the morning and get the receipts at other yards anywhere from seven to eight o'clock. In sorting you may have a load of stuff that consists of lambs, yearlings, wethers, and old ewes, and then they would have to be sorted in tops, culls, seconds and skips. We have from sixteen to 18 different classes in some loads; [fol. 506] that is not the usual load during the native season, which is between the first of May until about the first of January. A "skip" is a light lamb weighing between thirty or forty pounds, and they are generally found in most all native shipments. We class lambs and sheep by their teeth. A lamb will show his lamb teeth and a yearling his yearling teeth. Anything over a yearling is an old sheep, and an animal a year old determines the difference between a lamp and a sheep.

I cannot approximate the number of sheep as compared with the number of lambs received at the yards. The number of sheep in my opinion would be fewer. I cannot

estimate the percentage and would not want to make an approximation. The buying of sheep on the Chicago yards begins when the packer buyers get ready to buy. The buying at this time is commencing at 2:30 to 3:00 in the afternoon.

During the morning there is actually no trading done, no actual buying or selling, but merely trading talk.

We sell some stuff during the morning at 8:30, 9:00 and 10:00, lots of it, and at eleven, but the bulk of the lambs are not sold until between two and two thirty. I have reference to trading as it was being conducted during the month of May, 1934. But during the two weeks previous they have been selling sheep and lambs earlier in the day.

On fat stock most sales occur between twelve o'clock noon and three P. M., and on culls feeders and mediums it would be anywhere up to five or five thirty P. M. I stay at the stock yards until I am through. We sometimes stay as [fol. 507] late as 7:00 P. M. five days a week. We had eight carloads on Monday besides trucks which my assistant and I sold, and wound up about 12:30. Today we had for sale seven carloads and ninety-six head of mixed stuff in one truck and six in another. I left the sales yards at 1:00 P. M. We had 100 and some odd head in different lots still unsold.

It all depends on the season whether native sheep or western lambs require more sorting. A lot of sorting is required in the summer and fall when the range lambs are running, and that there would be a little more sorting on the natives. From about the first of January to the first of June the western lambs will run in straighter lots, requiring less sorting. I think that John Clay & Co., carlot business was about even as far as straight lots or mixed lots, and that while truck shipments may have several different owners in them, you may get a truck shipment belonging to one owner; most of them have several different owners.

I generally try to solicit 63 days per year, but as a rule do not get to use that much time. I usually go out for this purpose from the market Saturday afternoons or Sundays and sometimes am unable to do that.

I go as far as the west coast on a long trip once a year; I also solicit in Iowa, Nebraska and Illinois, and I make my nearby trips over the weekend. Once in a while I may

take a full week; I travel by rail and I might cover several [fol. 508] counties in one week end. I get a list generally from banks in certain territories indicating live stock that is in that territory and then attempt to arrange my trips so as to call on as many prospective shippers as possible. By so doing, I may call upon a feeder of lambs who is about ready to ship and upon request of the owner will sort them and grade them for him, and by so doing would separate the fat animals from the others. I never attempt to tell a shipper what he will receive for his livestock, but will say that "in my judgment, if you ship them in next week, they will bring about this figure".

It is harder to sell single deck feeders than it is double decks of feeders; if the market is slow and draggy you could sell a single deck easier than you could a double deck. There would be hardly any difference in selling double or single if you got a fast market, but they are rare. It depends on the supply and demand as to whether stocker and feeder lambs are more difficult or less difficult to sell than fat lambs.

"Q. Yes. In your judgment, how many carlots of sheep do you believe you could have sold if you had all that you could sell? Now, I want you to assume conditions as you found them. You have your various days, the slow and draggy and fast market; consider all the conditions as you found them during the year 1932, and then assume that you had all that you could handle. Now, is that clear to you so far?

[fol. 509] A. No, it is not, Mr. Miles.

Q. We will start in all over again. Taking the year 1932 just as you found it, you had different kinds of days, did you not?

A. We did.

Q. Slow market and fast market, hot days and cold days, rain and snow, and again I want you to consider that things existed just as that way, I want you to consider ever-thing as being exactly the same as you met it during that year, only I want you to assume that you had all the sheep you could handle; how many carloads, in your judgment, could you have sold?

Mr. Boyd: Let me—I object to that question for the reason that the witness has not testified that he knows how

many he did sell or that he could have sold more than he sold; that the answer to the question presupposes a condition that the witness could have sold more than he did sell if he had had them to sell, that if he could have sold more than he did sell that it does not tend to prove that he was less efficient than he is as a salesman, or that his value as a salesman was any less; that the answer to the question will not prove any of the issues in this case; that to answer the question would be an approximation upon which the Secre- [fol. 510] tary could not arrive at would be a proper or would have been a proper service during 1932, or the further fact that I believe that the service rendered in 1932 by this witness was a full day according to his own testimony to dispose of business that he sold.

Mr. Miles: Mr. Examiner, I think I will move to strike the testimony of counsel.

Mr. Boyd. And I may say to the Examiner that the objection is not stated for the information of the witness. I have avoided, as far as I could, entering any objections to questions by Government counsel, but, in this situation, I think I would be permitted by the Examiner to indicate to this witness the use to which I believe that his answer might be put in view of the jeopardy that he may be placed in by a failure to properly consider the answer which he makes. The witness is about the stockyards; it may be used; the employees here probably, very probably are uninformed as to what the issues here are. I may say that even I myself am very much at sea as to the use to which some of the evidence may be put but in order to save the record I do not want to ask the privilege of explaining to this witness how I think his answer may affect him. If he does answer, I would simply want him to consider very carefully the answer that he may make and to be very precise in the [fol. 511] things that he may say upon this point and be certain that he is as accurate as it is possible for him to be.

The Examiner: Any further objection?

Mr. O'Bryan: Yes, I would like to object to the question on the ground that it puts upon the witness the burden of assuming all the factors surrounding what he may or may not do on a given day, and that is a question which the witness is neither qualified nor expected to assume. It is an improper question.

The Examiner: Anything further from either counsel?

Objection overruled.

(Whereupon the question was read.)

The Witness: It is hard to say.

Mr. Miles (continuing): Well, can you give us your own best judgment on it?

A. As to the number that John Clay and Company sold?

Q. No, that you could have sold?

A. That I could have sold.

Q. Yes.

A. I cannot.

Q. Did you answer?

A. I cannot.

Q. Do you believe that you could have sold 2,500 cars?

A. Myself?

Q. Yes, sir.

A. No.

[fol. 512] Q. Do you believe you could have sold 2,000 cars?

Mr. O'Bryan: I object to this form of examination. The witness has answered that he cannot answer the question. Now, this is an attempt to cross-examine Government's own witness.

Mr. Miles: Again I object to Mr. O'Bryan's objection which can have nothing to do with the order buyers.

The Examiner: Objection overruled.

Mr. Miles (continuing): Do you believe you could have sold——

Mr. Boyd: May I object to the question for the reason that the witness has said that he did not know how many he did sell and that he does not know how many he could sell? He has already answered the question, I think, Mr. Miles.

Mr. Miles: He may have answered one question, but I asked another one.

Mr. Boyd: All right.

(Whereupon the question was read.)

The Witness: I do not know.

Mr. Miles (continuing): Do you know the largest number of cars in one shipment made by one owner that you received in the year 1933?

A. No, I do not recall.

Q. Could you approximate it?

A. In any one day?

Q. Yes, sir.

[fol. 513] A. Four cars, to the best of my recollection.

Q. Did you sell them yourself?

A. With the assistance of Mr. Bourne.

Q. And did you have other cars the same day, do you recall?

A. Other shipments of livestock?

Q. Yes.

A. Yes.

Q. You do not remember how many?

A. No, I do not.

Q. Mr. Swanson, in your judgment, could you alone sell 1500 carloads of sheep in a year, taking all conditions as you found them?

A. I do not know whether I could or not, Mr. Miles.

Q. Do you believe you could sell a thousand?

A. It is hard to say.

Q. In your opinion, could you have sold any more sheep last year than you did sell, if the supply had been available, that is, if they were in your pens?

Mr. O'Bryan: I object to that form of question because it again forces the witness to assume many and various other factors, and I am not trying to coach the witness, but he is not called upon to assume and answer improper questions.

The Examiner: Objection overruled.

Mr. Boyd: Now, let me say that there were days in 1932 that the record will disclose when the sheep had to be [fol. 514] carried over, they could not be sold at all. That is the bulk of the shipments had to be carried over during the year 1932. The witness has testified he did not know how many cars he did sell or how many head he sold or anything else. You are assuming now, I take it, that you want him to answer the number that he could have sold if he had had them to sell in addition to those that he did sell. Is that the purpose of the question, if I understand the question?

Mr. Miles: Will the reporter read the question?

(Whereupon the question was read.)

The Witness: I do not know whether I could or not.

Mr. Miles: I think that is all for the present.

Cross-examination:

In order to determine whether sheep or lambs are fat, it is necessary to handle them, that is go over their backs and ribs with your hands to determine their condition of flesh. And it requires the handling of each animal separately in sorting and grading. I always have my assistant help and generally educating the yardmen to advise them and have them mark them. You either hand pick them out or you chalk mark them as the case may require; so that in selling 100 lambs I physically take hold of the animal and examine it for flesh, and that requires assistance to do this. [fol. 515] *He* He does not find that many owners are able to sort for flesh the lambs that they have fed and do it accurately. When rendering service to patrons or potential patrons in the country in sorting or grading that it is desired by the owners, we make requests to come to the country for that purpose by wire and by letter and we get more such requests than can be satisfied. In soliciting business, we have a two-fold purpose; one, to serve the shipper, and the other to serve his company. I visit feed yards adjacent to the Chicago market for the purpose of grading and examining sheep consigned to John Clay; and sort out those that are on feed which are fat and leave the balance to continue feeding; such service is requested by the shippers.

The effect of a disallowance of any amount of money or any sum of money to my firm for the purpose of traveling either in soliciting or in rendering advice to shippers, would cause John Clay & Co. to lose the biggest part of the business; and it might have the effect of injuring our patrons by not permitting the necessary number of trips to the country. This would result from failure of the shipper to receive our judgment on how soon lambs were ready for market, *of it* they were ready for market, such a trip might save a feeder of lambs a large sum of money that might be lost by premature marketing of lambs.

[fol. 516] It is possible that they would continue to feed lambs beyond the necessary time or over-stay the market, which would produce a financial loss to the owner of the lambs. On trips I come in contact with solicitors from other

markets or from other firms, and that it is impossible to avoid this, but that if I do not solicit the business of our customers or potential customers I cannot expect to get the business and in most cases I have to go out and talk to the owners of lambs to get them to ship.

I have not had the experience expressed by Mr. Marshall, Secretary of the National Wool Growers that solicitors of sheep were running over each other in the solicitation of business throughout the west in certain seasons of the year; there are a fewer number of commission firms selling sheep than in the case of hogs and cattle, and that the Chicago market leads this country in the making of a price on sheep and lambs; and as nearly as I can judge it, the other markets in this country follow the Chicago market.

The failure upon my part and upon the part of other people engaged in the sale of sheep on the Chicago market would have a wide spread effect upon the general prices received in the United States for sheep, and that anything that is done to injure the efficiency of the Chicago market will hurt prices all over. I am rated by John Clay & Co. as their first salesman; the position I hold at the Chicago market is one of greater responsibility than held by any other sheep salesman in that organization.

[fol. 517] I do not think that the number of animals that I could sell in a day has anything to do with what John Clay & Company pays me as their first salesman, at their largest market. I do not believe I did any more solicitation, country traveling, than is absolutely essential in the preservation and maintenance of the sheep business of John Clay & Co. at Chicago; and would like to do more. John Clay & Co. receives sheep business from the entire country from the Pacific Coast to Chicago and from Texas to Chicago; also gets some from Michigan, some from Ohio and some from Indiana, east of Chicago.

A greater number of drafts is necessary to dispose of the same number of animals during the past two or three years and that there are a greater number of owners, and the lots have become smaller than are marketed on the Chicago market. It is harder to sell nowadays than in former years.

It is more difficult to sell drive-ins and truck-ins of lambs than if they had arrived by rail, and that a greater charge is made for the service.

I was called when I was leaving the sheep house at one

o'clock and I left the sale of the sheep in charge of an assistant and at 2:45 P. M. was not sold out. The patrons, owners of sheep that shipped to John Clay & Co. are more concerned about service than they are about the charge they make for commissions.

[fol. 518] The direct purchases of sheep and lambs has been increasing in the last several years, and such purchasing has an effect upon the demand for sheep that arrive, and the effect is detrimental, bearish.

The direct buying by the slaughterers of sheep has increased and it requires more effort and solicitation on the part of our company to maintain the business that it has and to get new business. I know of no other way to overcome the direct purchasing by slaughterers and direct selling by the owners than the personal solicitation or advertising that they do or have been doing.

For the benefit of the shipper, in order to keep prices up, the shipping to the market on Friday was discouraged. You could not take a proposed volume of business that a salesman could handle and multiply by the number of market days and expect it to come out in that fashion as to what a salesman ought to do in a year. There are instances where shippers consign livestock to John Clay & Co. without any advance notice whatever, and there are other instances where they are advised to ship at a certain time; and there are times when we advise shippers not to ship and also advise them to ship to another market besides Chicago, at certain times; it being our object at all times to sell the livestock at a point that we believe will net the most money for the livestock to the man that owns them.

[fol. 519] There are certain times of the year that sheep handle harder than at others due to weather conditions. A wet drove of lambs or a wet drove of sheep handle harder than a dry drove. You will get them when they have sleet on their backs, and in the latter cases it is very hard to handle. It will take a longer time to sort them.

Cross-examination:

There is no such time based on day in and day out, year in and year out, when you can say the actual sales start to take place; market conditions vary, the law of supply and demand control; whether the buyers are interested in a certain type of sheep or lambs is a factor. Any one of 50

different conditions might be the reason why there should be a holding off in making sales or why sales should be made at the opening of the market or the end of the day. Lambs and sheep are sorted closer on the Chicago market than they are on any other primary market.

Redirect examination:

It would take one minute to test a lamb. You may handle a drove of 125 lambs and sort them in 15 minutes or you may sort them in 25 minutes. In handling a drove of lambs, testing them for fattening, you may strike 50 or 60% of them and you may not need to handle all of them. In handling carload lots you would strike 50 to 60% in the carload. [fol. 520] John Clay & Co. make loans on livestock. We do appraisal work in connection with these loans to some extent. Might use one to three days a month; myself and my assistant might use more time. Some of the feedlots near Chicago are owned by the railroads and some by private individuals. Sometimes shippers give general instructions to market sheep from feedlots when we think they should be marketed, and most of the time we use our own judgment. Could not state definitely the largest number of carlots of sheep ordered from these feedlots on any one day this calendar year, at one time. It might possibly be that I have ordered as high as 20 carlots in one day from these feedlots and expected to sell them. Very often my assistant and myself work on one buyer in one pen at the same time and it is also frequently true that I show one pen to one buyer and make a sale of it.

I would say that the service you render a man is what brings the business, and solicitation to a certain extent on new business. It is necessary to solicit new business and the service rendered is the dominating factor in retaining old business.

Chicago is what is called a basic market and it leads the world. I can not answer as to whether our general reputation would cause shippers to continue to ship to these yards if the solicitation was abandoned, advertising and such means of getting business. The solicitation that I do [fol. 521] is to get the shipper to ship to my company instead of to a competitor. I think I am as good a sheep salesman as any at the Chicago Stockyards and I could sell as many sheep in a day as any other salesman. It would

not be reasonable to charge a higher commission rate for selling a single deck of stockers and feeders than for selling a double deck. My reason for making that shipment is that we have a single deck sorted out, a two or three car consignment, and we have a single deck sorted out for another two or three car consignment that we can work along and probably match up the one. It requires a little additional work, and I am talking about feeders only, not about slaughter lambs. I have never talked with our customers about commission charges, but that we are always telling them about the quality of the service rendered, meaning the quality of service as far as getting the most money out of the consignments, filling them, feeding them, putting them over the scales, with as light a shrink as possible. I do not always get the top of the market. C. A. Kleman & Co. does an order buying business. They buy from John Clay and from everybody; A. L. Williams is the sheep buyer for C. A. Kleman & Co. Solicitation is necessary to combat direct purchasing. I have no direct knowledge as to the success of solicitation in combatting direct buying. I have not been successful in getting a great many shippers to discontinue direct buying and ship to John Clay but I have gotten some covering the past two years. Direct buying is a detriment to the farmer; based upon my own deduction I also have known of sales made in the country that would [fol. 522] have netted more money on the market; the number of such sales I cannot say offhand. Some sales off the market might be higher than on the Chicago market but that would be rare. I do not know how many. The abolishment of direct marketing for one reason or another would not make it unnecessary to solicit business. We have to solicit business to retain some of our old business as well as to get new business; and I do not think service alone sufficient to retain the old business, but is a great factor. I do not believe that solicitation could be cut down at all if direct marketing were eliminated; if direct marketing was discontinued there would be more people to see to try to get their business. I should spend more time in the solicitation of business but he cannot get time to do so.

There are times when we are forced to carry sheep for two or three days; it all depends on your market conditions and the condition of the stock. It may happen one

day a week or it may happen two or three times a week. It would happen fifty-two times in a year; it is apt to happen more frequently, but I have no records.

Cross-examination:

I believe the best salesman as a class in this business in this country are selling sheep on the Chicago market.

JAMES L. MERRION, a witness called by the Government testified as follows:

[fol. 523] Direct examination:

I am frequently spoken of as Lee Merrion and reside at 10046 Hoyne Avenue, Chicago; am salesman and Manager of Merrion and Wilkins at Chicago, Denver and Ogden. The firm name is Merrion and Wilkins; is a partnership; the other partner is named Russell Wilkins, and he lives at Ogden, Utah, and is in charge of a branch house.

We have 28 employees including myself. We have but five employees at Chicago, including myself. We have reduced our force in Chicago during the last ten days; as it now stands there are four, to-wit: William Hager, Ed Matthews and Dale Phillips.

Mr. Hager is a salesman, and in addition handles correspondence, fills orders, buys on the market and compiles information for our own use and that of other markets. Mr. Hager is not an office man.

Mr. Matthews manages the office and keeps the books. Mr. Phillips is a yardman and stenographer. Our business is seasonal and this is the season when supplies are light. The volume from the first of July to the first of May is considerably heavier than it is from the first of May to the first of July. About January 1st have another employee, sometimes more. Had three more employees at the peak; their names being Ethel Phillips, a stenographer, Jim [fol. 524] Hoolihan, a yardman and John Barr, a yardman. The yardmen do no selling; yardwork in sheep being sorting and yarding, and watering and feeding and all that sort of thing. Mr. Hager sells on his own judgment and in every way acts as an ordinary salesman generally; at times when I am there and we work together on a string

of stuff, his actions are dependent upon my judgment, more so than when I am not. It does happen that Mr. Hager and I would be working on the same string or bunch at the same time, not dealing with the same buyer, understand in sheep there are many classifications, and they have to be sorted and sold and shown to different buyers, but on fat lambs or those desirable for packer use I might handle that and Mr. Hager another classification, the feeders or the ewes or something like that. I came to Chicago as an office boy for the Knollin Sheep Commission Company about 25 years ago and remained an office boy for perhaps two years. I worked as a student mutton salesman in Swift's packing house; being there for the purpose of being educated along the lines of the different cuts of sheep and how they are sold. At the time I was there my duties were principally filling orders and lugging beef. There happened to be a strike on at the time. I think I was with Swift for a year. I then worked in the yards as a sorter-yardman for the Lee Live Stock Commission Company, for perhaps a year; then I went to Omaha in 1914 and filled orders for lamps on the Omaha market, having a desk with John Harvey & Company; acting as an order buyer during the hoof and [fol. 525] mouth quarantine year. Was at Omaha one year; I then went to Sioux City and sold sheep for Fitzsimmons, Pierce and Frick, also the Lee Livestock Commission Company. I think I was there for two years, until 1917. After that I was in France for two years, then I came back to Chicago and sold sheep for 15 different commission firms at one time. And continued until 1926, when we established Merrion and Wilkins.

If I had sheep to sell I would not choose to send them to anyone to sell with less than ten years' experience. I would not feel that one is qualified to sell if all their experience was on one stockyards. I think experience as a buyer a valuable asset for a salesman—to know how things operate on the other side of the fence. I do not believe that one year's experience as a buyer would qualify one to step right out and be a salesman; some experience in addition to buying experience is valuable, but too much might not be an asset to a salesman. In the first place, a man who has acted as a buyer for 20 years, his habits are pretty well formed, and he is a bit old to get into the selling game, which is entirely different.

Our firm has either bought for customers or sold sheep for customers in 38 states last year; that the majority of them come from Montana, Idaho, Oregon and California. I would say 60% of our receipts came from the Northwest in general—Montana, Washington, Oregon, California, Nevada, Utah, Idaho, Wyoming and Colorado. And our busi- [fol. 526] ness is pretty well scattered. I would class sheep as native sheep coming from points east of the Missouri River, but do not receive sheep at Chicago immediately east of Chicago and Indiana. The sorting to be done, in handling natives, involves classifying the sheep for ages and sex. Western sheep are not so mixed up in so far as ages and sex are concerned. Dealing with natives, sorting for age, you have for instance, lambs, yearlings and aged sheep. Through a cutting chute you can sort the lambs off, their wool is quite a little different and their appearance and the size of the head. You can tell from the looks, the lambs and the yearlings, too. The yearlings are younger sheep, but to really know the age and sex of the older sheep, they must be handled, that is, caught and their teeth examined, as well as examined for sex, and they must be classified, ewes above a certain age, packer ewes under a certain age, and if they have the qualification of good breeders, they are sold as breeding sheep, and there are times of the year when even those that should go to the packers are sold for breeding purposes. It depends upon the demand.

As to the length of time to examine sheep to determine their age, if you have a sizable bunch and they are properly penned or shoved together, so that you can work them fast, with chalk, you can examine their teeth and examine them for sex and mark them so as to identify each animal very shortly. If you have the proper equipment and help as necessary, to get these sheep into the pen and get them [fol. 527] lined up ready, I would say that an hour and a half for 100 sheep would be the time necessary to give an examination and to determine sex would take some time longer. The necessary equipment we manufacture. It involves getting them out into an alley and measuring the space we think it will require using enough cross gates here and there to get the sheep into the proper enclosure. It usually takes more than one to tackle a job of that sort, and it would take more than one in order to complete the

job in the time stated by me—one man might do the marking. It is necessary to tighten them up as you go along, and it usually requires the services of two men to do the job and oft times more, but that estimate is based on the assistance for the man who is doing the job. Mr. Hager had a small following when he came with Merrion and Wilkins and he brought that trade with him, and it has been retained.

Most of the shipments from the West would be classed as lambs rather than sheep, perhaps 75 percent would be classed as lambs. They come to Chicago from California in May and in June they will come from Idaho, in July from Washington, later from Montana. The sheep marketing year starts off in May or the latter part of April with California unloading and the other states follow, Montana usually being the last State to market. There is sorting required in handling spring lambs. The purpose of sorting is to make them present a better appearance to the packer, we sort the feeders off and that involves sometimes a second sort for weight. Lambs of 90 pounds weight are [fol. 528] desirable in certain sections and we endeavor to cut those off, from 75 to 80 are marked. With any other localities and other buyers we classify them, we cut the feeders off and the feeders can be sorted for weight. If a man buys feeders he wants them uniform for the reason that uniform lambs feed better. If they are light and heavy, the heavier lambs would crowd the smaller ones away from the feed, and for that reason, they want them uniform, so it is our job to shape them up and sort them so as to present a good appearance to the man who might buy them. Then, there is of-times a demand for ewe lambs. We sort the feeders for sex and get those that are best bred, and have the characteristics of developing into good breeding sheep, and find an outlet for those to people who are able to handle them and want them. In handling Western lambs, the first sort is to take off the feeders, and if the lambs are well enough bred, have the characteristics of good breeding sheep, we sort the feeders for sex when there is a demand for them. We determine a feeder from the appearance and the way it handles, that is, we put our hands on its loin or back or handle the tail, which indicates the condition of flesh of the animal. Assuming that I had 200 sheep in a pen, 50 of which were feeders, and was asked

to approximate the time necessary to do all the things to determine that these 50 actually were feeders. We will say that they are Montana lambs in the month of September; with what facilities we have got down here, the time would depend a lot upon the amount of congestion you would run into, the facilities for sorting and pens for handling these sheep are not always available, and, however, if they were available, and if there were none of the factors that [fol. 529] you very often run into that stood in the way of getting these sheep done quickly, I would say that to get the 50 feeders off this lot of 200 would take an hour. And I would need one man to assist me. That would require running these through the cutting chute which would not take so very much time after you had them lined up to the cutting chute, penned and re-penned, and then going through the lot a second time with chalk and handling these lambs, so that you would get those that you did miss and hand-picking those and putting them back into the lot. You crowd them in order to mark them.

You would first cut them, look them over and try to determine how they should be sorted, and then cut them and to put a finish on the job, you go in with chalk and chalk off those that are in-between in flesh and rather than shrink them, the amount necessary that would be required in cutting them the second time, you hand-pick them off, and that involves picking the lambs up and carrying them out to the gate and throwing them outside. You understand that at that season of the year the natives are running quite freely as are the westerns, and there is a lot of classifying necessary, all of which takes up pens and facilities for handling these sheep, and you cannot run your particular lot of 200 out and force the other fellow to vacate the pens and facilities on the spot; you have to wait and take your time; and by facilities, I mean stockyard facilities, such as pens, alleys and so forth. At this season of the year (May) we [fol. 530] have several times more than we need, but when the peak receipts are on, why we are congested. In the case of lambs that packers will buy, to properly determine where they should sell or to whom they are most desirable, it is necessary to handle them. If they are exceptionally fat, there is no doubt in your mind but they don't run that way where there is a big percentage of each lot that comes in that way on the dead line or close to it, and it is necessary

to handle them and examine them carefully to determine where they should go. If they were all on the dead line we might show them separate first and see how they appeal to the other fellow, and then if they did not appeal or if they demanded part that weighed too heavy, we would classify them and sort them so there would be no doubt in the packers mind as to just what they were. I arrive at the stockyards early and sometimes late; between January 1st and July 1st, 7:30 A. M. Usually at that hour the sheep have been yarded. I go out actively to sell at 9:00 o'clock. Earlier I usually go down and determine what sorting is to be done, and how the stuff is best presented, as well as get an idea of what we have to sell and find an outlet for certain types that there is not a ready market for. From that time until the time I go down I attempt to get posted, get information on the other markets and I determine what the condition of the dressed markets are in the East and get information on all the factors that have to do with the market that day on the sheep. We also get information from our [fol. 531] offices at Ogden and Denver, we get the sales there, and we get the actual sales on the various markets. We get information as to prices from various packers in the East. Showing sheep to a packer involves putting a price on them. Assuming that I had 20 cars of what we call similar lambs, the same value, the same flesh and they are owned by different owners, some days none of the packers would seek me and other days they all do. I would attempt to determine the volume that, or attempt to find the packer who has made the lightest buy for the preceding days and who most likely would be the best buyer, and select him as the first prospect. I sold clipped yearling lambs yesterday for 6½¢ a pound. As to how I would start in to arrive at a price to sell lambs this morning to give my mental workings, there is not, at the present prices, the market value of dressed lambs is not as high as it should be to justify paying the prices, if it were not for the fact that by-products have increased considerably of this particular kind of slat. There are three grades, No. 1, 2 and 3. Number ones were worth $1.00 yesterday, the previous day's sale was 90 cents. The value of that same grade of shearling pelt six weeks ago was 25 cents and the value of the number two skins yesterday was 85 cents and number threes 70 cents. Six weeks ago they were throwing into the tank as worthless the number twos and number threes shearling pelts, so that the

meat today does not bear the full brunt of the price that is being paid now. In addition to the advance on shearling skins, other by-products now have an active market for [fol. 532] them. Insofar as receipts are concerned today, we have but seven thousand on sale, part of which are direct shipments to the packers.

Today there are probably twelve cars on sale other than those direct to packers. So regardless of the directs, they must have some lambs to sell, in the cooler to sell along with beef and pork, and there are a certain class of people who will buy regardless of price, so that it is reasonable to think the market will be stronger today. Furthermore, the lambs that are coming forward now from California, Kentucky, Virginia, etc., those are the states from which we are getting our receipts now, are light in the average weight between 70 and 75 pounds. These yearlings will average 90 pounds or better in weight. You can realize that for cutting purposes, that is, chops and roasts and the like, and the light animal or a carcass weighing 45 pounds, which is the approximate yield of one of the 90 pound lambs, would be more desirable for that purpose than the 70 to 75 pound spring lambs; and as the season advances and the weight of the spring lambs increase, there, of course, is less demand for these older lambs but with the advance, the appreciation in the value of these by-products, shearlings and others and extremely light receipts and the condition that I have just outlined here as regards the desirability of heavier meat, I would want higher and stronger prices than 6½ for that [fol. 533] type, if I had them. Clipped lambs are classified as yearlings the first day of June, that is today.

If I received an offer this morning of 6½ cents from packers, I would not immediately take the offer. I would expect to get stronger prices for them so I would want six and three quarters. If I received six and three quarters at the opening of the market, I might sell immediately. If I can get what I think they are worth early in the morning, I will sell them. It often times happens that small buyers on the market start off with an order, they have an order for but one car of lambs. If they see what they like and are willing to advance the market in line with what it should be advanced in my judgment, I would sell them. I might say that does not happen very often. From January until June we do not have ten cars per owner shipments, and it would not happen in one day any time during the year. We han-

dled five cars during the year from one owner, but do not recollect having received seven.

During October, 1932, I think I sold 15 cars. I do not recall the circumstances, the day or the date. The number of hours put in selling the 15 cars I would think to be eight hours, would be selling after three o'clock P. M. of feeders and odds and ends, and we work until they are sold. During our busy season we very often work until 11 or 12 o'clock at night. There is considerable congestion at that [fol. 534] time, and the process of handling that stuff is much slower than at this time of the year when the receipts are light. I do not make the practice of selling traders' sheep. Most of our receipts come by rail.

It is more difficult to handle and sell sheep that come in by truck than by rail. It would take two men to handle almost any lot of sheep, in a carload there might be 250 sheep requiring two men. In a truck load there may be 10 sheep requiring two men. The number of sheep in a car depends upon the season of the year, and where it is shipped from. From local country, sheep are shipped likely in single deck cars. From November on the average would be about 110 to 115 head to a 36 foot standard car, single deck. They are more double deck trucks in the last few years than formerly.

Q. Would you give us any thought that you have in regard to this situation, we will say, that 110 sheep would arrive by a single deck car, now consider 110 arriving by truck, just the way they do arrive at your pens, some would be a few in a small truck, others may be a greater number in a larger truck, could you then give us your own ideas with reference to the difficulty or how much more time and trouble it would be to sell the 110 arriving by truck than arriving by single deck rail? Now, that question is long and involved. Do you think you get it?

Mr. Boyd: I object to it. It is not long or involved enough to allow this witness to make a proper answer. I think it does not contain the basis for an answer, I think it does not contain the factors that ought to be given to this witness in answering a question of that type. The state of the market and the nature of the receipts, the congestion in and about the stockyards, all of those things have to do with the handling of livestock on this market.

[fol. 535] Mr. Miles: I will ask the witness to assume that all conditions are equal except the same number arrived by truck.

Mr. Boyd: And I should say to you that as a practical proposition that things are not equal around the stockyards. It is a hypothesis that is impossible.

The Examiner: Anything further from either counsel?

Objection overruled. Make your answer as I have suggested before as definite and clear and as accurate as possible.

The Witness: Do I understand that this 110 sheep are one shipment that comes by one truck?

Mr. Miles: You may, if that be the usual thing, you may assume that, or you may assume any other condition and explain just what you mean. In other words, Mr. Merrion, explain any answer that you wish in order to make the facts clear.

Mr. Boyd: May I interrupt you?

Mr. Miles: Most certainly.

Mr. Boyd: And advise this witness the object of his testimony and the importance of it by reading to him the findings in the previous case, Mr. Examiner?

Mr. Miles: Now, Mr. Examiner, it seems to me a witness that, up to the present minute, has shown that he is of unusual intelligence and a man who has honestly tried to answer each question propounded, certainly would not permit his testimony to be influenced either way by the explanation which Mr. Boyd wants to make.

Mr. Boyd: I think that being true the witness unquestionably will not change his testimony by what I am about to read to him as the findings in Docket 383.

Mr. Miles: Then, why read it?

Mr. Boyd: So that he may realize the importance of the questions and the necessity of getting into this record sufficient facts surrounding his answers, that an answer may not be picked bodily out of his testimony and used for the purpose of illustrating the capacity of a salesman or the difference between the handling. We have a cost study and a time study on just how long it took to do this work.

Mr. Miles: Mr. Boyd——

[fol. 536] Mr. Boyd: With a tab carried for the purpose so that there is not any question about it as to the actual time, and the assumption that this witness might make,

the Secretary, under the broad powers that he has, may be able to take a statement of this witness which is contradicted by better evidence, and use the one and discard the other.

Mr. Miles: I am merely attempting to get a picture of selling an equal number arriving by two different methods, assuming that all other things are equal, that is all I want. On cross-examination, you may develop anything. I have listened with a great deal of pleasure to your testimony which you have already given. That is all I want, is just a picture here, but you know we are getting along very fine indeed.

Mr. Boyd: Yes, sir, I have been letting you go as far afield as I reasonably could be expected without interruption. Now, I think you have gone beyond the pale.

Mr. Examiner: I will let the witness answer, and, Mr. Boyd, on cross-examination, you may read to him from the order that you have in mind now. Apparently Mr. Miles wants the witness to answer and the Examiner has tried to make it as clear as possible to the witness that what he is interested in is in the facts as you see them, as you know them. Is the question clear to you?

(Whereupon the question was read.)

Mr. Boyd: I would like to raise the further objection, Mr. Examiner, that the witness has not testified that he has ever made or attempted to estimate, or that he has ever had a shipment of the nature, of the kind indicated or that those circumstances have arisen in the performance of his duties.

Mr. O'Bryan: I want to object to the question, I am reserving my pointed objections for cross-examination, but I think that the witness, in answering questions of this kind, should be instructed by the Examiner that it is within his province to assume any and all data which are facts within his knowledge in describing the situation surrounding his answer.

Mr. Miles: Which is perfectly agreeable at any time that you want to assume a fact and will state that you have assumed that fact; that is perfectly agreeable. The Government is seeking only the facts in this case and we want your help.

[fol. 537] Mr. O'Bryan: In other words, my position is that the Government in its questions is giving the witness

no facts on which an answer can be based. Now, I feel, and I objected strenuously to this type of questions, that the witness should be definitely instructed by the Examiner that they may assume any and all facts which they, of their own knowledge, know to be facts in connection with the operations of handling and selling at the Chicago yards, and that their answer then should be based upon the facts which they have assumed and stated.

The Examiner: I have tried to make it as clear as I possibly could; all I wanted to do was to impartially get the facts and get them as definitely and as accurately as the witness can possibly give them. Witness may answer.

The Witness: As I have explained, but a very small percentage of our business comes by truck and any opinion that I might express as to the ease of handling one or the other of this type of shipment would be strictly a guess. Furthermore, if on this 110 head involved, as you made the question, Mr. Miles, if the 110 head comprised several different shipments, there would be just as many times the difficulty in handling that shipment as there were separate shipments within the lot.

If there were five owners represented in the single deck car shipment and five owners represented in these truck shipments; if there were five lots of 22 head each, it would take two men, as I have described before, to yard and handle that stuff, and find pens for it, all of which takes time and then another two men to handle the next lot, when they arrive by truck. When we get a mixed shipment or a cooperative shipment by rail they are handled as to unit lots, they get separate pens and until we sort them, there would be quite a little difference between handling one [fol. 538] mixed shipment arriving by deck and five trucks comprising 110 head. It takes more help, more time, more pens in keeping truck shipments separate. I could not give or approximate the extra time. In the case of a carload shipment, plural owners, they are sometimes handled as units, the shrink prorated. The same might be done with trucks but I have never heard of that being done, and I cannot imagine why they would do it. I could not have handled more business from July to May than I did handle with the same amount of help. I do not think I could handle 500 cars more or any number of cars more. As a matter of fact, our ability to handle sheep was taxed to its

capacity during most of that time. I think what we did sell was our maximum capacity; there was no time or no days during that time where we handled no sheep at all excepting Saturdays and Sundays. Very often on Saturday we have as many sheep to sell as on any week day, but not every Saturday, but during all of that time five days a week, and, during a large part of it we had market days six days a week.

Cross-examination:

During the peak season we would be unable to sell more sheep than we received, to properly handle, and to properly sell them.

In marketing of sheep, they follow the seasons, and that sheep, in order to be marketed have to be ready for market and there is no process that I know whereby sheep could be evenly distributed throughout the year so that a [fol. 539] salesman could use his time fully every day in the year actually selling sheep and doing nothing else. The weather conditions, the feeding conditions, and the breeding and types of sheep have to do with the season at which they are marketed. For instance, in Kentucky and Tennessee, where they have grass eleven months a year, they can lamb, they can breed their ewes so that the lambs come in December and January. Those lambs at four and five months are ready to be marketed, whereas in Montana, the season is such and feeding conditions are such that they cannot breed their ewes to lamb before the first of May, and in many cases as late as the 15th or 20th of May, which means that the lambs cannot be marketed before five or six months later, due to the feeding conditions in Montana. So, as explained, the season, the marketing season for the year starts off with California in the latter part of April and through May, and in May, Kentucky, Tennessee and States where they have grass eleven months a year join in, and then, as the season advances, these other states follow, Montana and New Mexico being among the last.

In September, you get the tail end of the Washington, Idaho and the Montana lambs, running in full volume and many other states fit into it making for a peak shipment. That is the season of over supply and the capacity of any selling organization is taxed at that time. Sheep produc-

tion works in cycles, usually five to seven years up and five to seven years down. From 1923 or 1924 until 1931, we were advancing in the production of sheep in this coun- [fol. 540] try. We reached the peak volume in 1931, and when we reached it, prices went off to a point where the business was unprofitable for the producers, and, consequently, they permit their ewes to acquire age and die off and do not hold young stock back for replacement, which means that the volume over the period of the next three or four years will fall off considerably, and an organization handling stuff must maintain at least a nucleus of their organization through the period of lean times and fat. Furthermore, when, as I say, the lean times in the sheep business come, as they will come next year and from then on for several years, the season, our dull season will spread over a wider period. What I mean instead of receipts keeping up in volume until the first of May, they will let up the middle of March and extend further into the summer.

We keep in our employ regularly a sufficient number of skilled men to properly dispose of what we believe will be the peak requirements in a year's business, with the addition of yardmen and help of that type which is required. It would be impractical to attempt to reduce the organization, so far as skilled men are concerned, during the periods of light receipts and increase them in periods of heavy receipts. You could not find them in periods of heavy receipts.

Chicago is the leading sheep market with reference to making prices on sheep in the United States; and the prices [fol. 541] that we salesmen make find their reflection at all other markets in the country. Any mistakes in price made at Chicago would find their reflection in other markets. I make soliciting trips, usually making a trip lasting 30 days; visiting our offices at Denver and Ogden and go west to the coast and back through Washington and Montana. On these trips I attempt to visit the larger producers of sheep and lambs.

As to the services rendered on these trips to producers which would reflect to the producer's benefit and not especially as to us, at this time we give them information as to the trend of the wool market, and the sheep market at this particular time because of the advances in wool prices, and

the reduction in sheep population of the southern and eastern states.

The firm of Merrion and Wilkins, in my judgment, as an owner and partner, did not do any traveling during the year 1932, which in the exercise of good judgment could have been avoided. I consider all of our trips very necessary, both to my customers and ourselves.

Salesmen have different methods that they use, different salesmen have different methods in the handling of their business that are peculiar to them. Salesmen become acquainted with the methods that are used by buyers at the [fol. 542] Chicago market over a period of years, and we change our methods as we believe it necessary to change them, and adopt different methods with each buyer. The methods which I employ as a salesman might be regarded more or less as trade secrets in some businesses. The length of time that it takes a person to perform a given duty depends somewhat upon the characteristics of the individual performing the service; one may be lazy, one may not, one may be active physically, the other may be slower, one may be less active physically and still be able to perform service more rapidly due to his familiarity with it. The fastest man in the performance of his particular function that Mr. Miles has inquired about might not serve in that instance the shippers as well as the man that might proceed more slowly, and the reverse may be true. The conditions on the Chicago market change fast at times.

It would be difficult to enumerate the varied conditions that prevail throughout even one market day, without attempting to estimate or to describe that multiplicity of obstacles that confronts me in the performance as a salesman on the market of the great size of the Chicago market. In selling shorn sheep we sell the wool gratis.

The normal tendency of a buyer is to want to buy cheaper always, and it is the reverse in the case of the salesman, his idea is always to get a higher price. The markets are slower [fol. 543] during the last two years than formerly. It is more difficult now to sell sheep than it was in 1923. Shippers had not complained to me about the charge made at Chicago. Most of them feel that if we can give them service, keep them informed and do everything to straighten out the present condition, that our service is not priced too high.

If our services were worth what the present rates were in 1923, they surely are worth the same now because of the increased difficulty of handling these shipments, the greater risk we take in handling the proceeds of the shipments, the banks failing all around, and the tendency on the part of the shippers to hold our checks, feeling they were safer than deposits in local banks. The way they reason and have the last year, has been my observation, is that they felt we had a stronger bank than they, and that we were bonded in addition, and that we had sufficient capital in our business to protect them. In 1923, in comparison, the financial conditions and general business was decidedly much better. Those are two of the reasons I can think of why, in my opinion, our service is worth as much as it was in 1923. It is hard to get a yard man whose counts are dependable and accurate straight through, and it is a very important part of a yard man's duties.

It takes five years ordinarily to become familiar with his duties so as to be a dependable yardman in connection with [fol. 544] sheep. With r our range shipments, most of our sorting is done at t e feedlots, and is done Saturdays and Sundays and weekends, in order to save shrink running the sheep through a cutting chute involves considerable handling and running around reduces their weight.

As to the effect of an order by the Secretary of Agriculture which would bring about a reduction in the amount of time that I could devote to soliciting business from new customers and maintaining the business we now have, keeping those customers shipping to us, I would do less business and would be able to give his customers less service, and that such action on the part of the Secretary would be detrimental to our producers and ourselves.

Q. Do you believe that you spent more time or that your firm expended a greater sum of money than you deemed necessary in the proper functioning of the business of Merrion-Wilkins during the year 1932?

A. I do not think so.

Q. Do you think it would have been policy to have done a greater amount of that sort of work and thereby expended a larger sum of money than you did expend?

A. No, because we do not seek more business; we do not want more business than we can properly handle, and, as

I have explained before, we are doing a good share; in the year 1932 we handled as much as we could properly take care of.

I believe as a class the salesmen on the Chicago market are superior to those found throughout the country selling sheep.

[fol. 545] Q. You answered a question that Mr. Miles propounded that drew from you an answer to the effect that sometimes you think in October, 1932, you may have sold as many as 15 cars of sheep in a day, is that correct?

A. Yes, sir.

Q. Now, do you mean by that that you and you only sold the sheep and that no one else showed them or had anything to do with them, no other salesman?

A. Well, I think on a peak day, I myself showed that many sheep.

Q. Showed and sold that many sheep?

A. Yes.

Q. Is it not possible that on the next day, the next market day after, that it would not have been possible, due to a changed market condition, to have sold half that number or a third that number?

A. We often run into markets where it is very difficult to get action and that we could accomplish less.

Q. Do you want the Secretary of Agriculture to understand that it would be a fair basis to fix rates to assume that you would be able to sell if you had them to sell, as many as 15 cars of sheep on every market day at Chicago?

A. No, I don't want to make that answer. However, you understand, that we have no control over receipts and at times you are forced to do the best you can and handle more than you would like to handle, that you know you can competently handle.

Q. Of course, that is during the peak seasons?

A. That is during these exceptional days.

Q. And it would be an exceptional case where you would be called upon to sell 15 cars in a day?

A. Yes, it would.

It would be an exceptional case where I would be called upon to sell fifteen cars in a day. It would be difficult as a

salesman on this market to accomplish. In the second place, [fol. 546] it would be impossible to get the receipts, and I am quite sure we have made such economies as we believed desirable and necessary from our point of view, taking into consideration the welfare of the men that we served during the year 1932.

We have not resorted to exorbitant methods of getting business or maintaining and running and operating the business of Merrion and Wilkins.

We limit the sending of the Chicago Daily Drovers Journal to our patrons as much as possible. It describes the market more fully than we could describe it.

The Chicago sheep house is the coldest place in the yards, for the reason that it is damp, the sun never gets at it to dry out the ground and the sheep steam once they hit the sheep house. It is necessary to handle sheep when their backs are usually covered with ice and when there is ice covering the wool on the backs of the sheep during the cold weather. It is rather painful to handle very many of them. As a matter of fact, you cannot handle them as you would when the weather is mild.

Q. Mr. Miles asked you if Mr. Hager had a following at the time you engaged him, and I think you said that that was true.

A. A small following.

Q. You did not employ him in any sense ni order to get the following, but you employed him for the purpose of ac- [fol. 547] quiring his talents in this business?

A. That is right.

Q. The following have anything to do whatever with the employment of the man in your judgment?

A. No, as a matter of fact, when he first came to us, he thought that he controlled enough business to justify his salary, but after six months we discovered that the following did not materialize and we made him a straight out and out salary deal, not considering that his clientele was much of any value to us.

It has not been my experience, as expressed by Mr. Fred Marshall, that the lamb and sheep growers of Marshall's organization have a feeling that there was too much solicitation, too much of an attempt on the part of salesmen, livestock commission men, to serve or render country service,

and found considerable fault with any allowance being made for that service in the rate which may be found reasonable. We do no more soliciting than we think necessary. It is important to properly grade and sort the stuff for market, and it is a very valuable service to the feeders. I am sure they are not objecting, but to a man like Marshall, who would witness the proceeding, it might look like it was overdone.

The sorting I do is at the feed lots after the sheep are shipped down, and it is always at the invitation and request of the shipper. As to whether I know any way that we [fol. 548] could reduce the expenses of Merrion and Wilkins in the conduct of business at Chicago without materially reducing the character of the service now rendered for the benefit of the men we serve, we could not do with any reduction of our present staff; traveling and advertising expenses are just as low as we think we can get along with and I do not know of any reduction other than to cut salaries further which I do not think advisable.

The law of supply and demand is the principal element in buying and selling. There are not any two days on the Chicago market year in and year out that are analogous; each day some one factor occurs which did not occur the day before which effects selling and buying.

The traders are an important economic factor in creating an outlet for breeder and feeder type of sheep.

Redirect examination:

On some sheep where you are not quite certain yourself as to their value, you price them perhaps a little higher than you think they will sell so as to try out the other fellow's judgment. We might try half a dozen other buyers before we are convinced we are wrong.

We did not reduce our expenses in any way during the year 1932, and in 1932 the only reduction we made was in our force when we reached the season of extremely light receipts.

[fol. 549] We did not cut salaries, during our busy season, which is approximately nine months a year, the force I have work long hours, very often are there until ten, eleven and twelve o'clock at night from early in the morning, and under those circumstances I did not feel that a reduction was advisable, and now with the advanced cost of living and

the prospect of a further advance, I don't think it is advisable to attempt to cut.

Mr. Hager and I took turns at staying late to sign checks and mail and that sort of thing, but our business, we prepared contracts and set-ups for western growers down here in the corn belt, accounting for those contracts was considerable; there was considerable work, bookkeeping and office work attached to it, and it delayed our business considerably.

Speaking of hazards, during the year 1932, banks were failing everywhere. Therefore, this money here and there was a risk and we found that many of our customers would request checks which they would hold for rather a long period than they should hold them and they reasoned that we did business with a stronger bank than they and that they were triply protected in that we were bonded and we had enough money in our business to offer protection even in the event the bank failed, they must collect, and, if we could not make it good, the bonding company would, so that [fol. 550] they were inclined to hold these checks, causing a float to be built up which we were responsible for that we did not run into in 1923 or 1922 or back a few years ago. With times as tough as they have been, there is the selling of mortgaged or stolen sheep, within the past year that has been rather great, although we carry insurance to protect ourselves in that respect. We have sold feeders and stock sheep to people who thought they had arrangements made to pay for them, but when the sheep were finally bought, their arrangements did not work out. We attempted to make certain that payment would be there before we shipped them out, and thereby saved a loss, or if we had, in a few instances, these old customers with whom we had done business before, and we had every reason to think that their finances were O. K. but they did not prove to be.

In the instance I have in mind, we did not sustain any loss, because we happened to know of another customer at this point who wanted a similar type of stuff and we were fortunate in avoiding a loss there. I cannot think of any other hazards off-hand.

I go into the Northwest, to solicit business and usually call on those people who handle the largest volume of business and have the most influence in the community I visit and talk over their business with them. We do not have a

policy with respect to expense for soliciting, but we equip [fol. 551] each man on the road with an expense sheet, together with a form he has to fill out each day outlining just what he has accomplished and what his expenses are, and we know approximately what they should be, because we have covered the territory and in that way we hold them down to a reasonable expenditure. We do not budget our soliciting or advertising expense. Mr. Hager also does road soliciting for our firm from the Chicago market. We advertise in the trade magazines and special issues of various papers that we think might be beneficial to our business. We do not advertise in newspapers. Very often from November until the first of April we have shipments arrive one day that are to be fed and cared for here in the yards and it is necessary to carry them over. If in our judgment sheep should be held over to acquire a fill, we do it. We do not carry them over if we think we can get what they are worth. I believe that I sold sixty percent of all the sheep and lambs sold by our firm at Chicago.

Mr. Hager was with us for a time on a commission basis as his business did not materialize we put Mr. Hager on a straight salary and disregarded his trade. When he first came with us his salary was $50.00 a week. I think the man with a moderate volume that has five or six cars a day would do better for his shippers than the man who has a car now and then. The continuation of rendering good service is of more value to the firm than the active solicita- [fol. 552] tion that we do in the field.

Assuming that all market agencies doing business at the Chicago yards were to cut squarely in two the money which they spend on soliciting and advertising, I think it would hurt them considerably. You know there is considerable direct buying, there are what I mean the small packers at each cross road, they are picking up and attempting to take receipts away from the central markets. To cut soliciting and advertising expenses in half it is reasonable to think that those cross road packers might make considerable headway and do the business that comes to this market now, and all of the markets. We have at Chicago eastern and western markets starting to pull business away. If they were to no longer contact the people they do through this advertising and solicitation, it is reasonable to think they might lose business to those points. Under those cir-

cumstances the western markets would absorb considerable of that business.

I think the contact of the commission man has much more of an influence with the people who ship than does the Stockyards Company soliciting. The direct buying of lambs has increased in the past few years. If it had not been for solicitation it is hard to say what might have happened. As to whether salesman here have greater experience, longer experience than sheep salesman at other yards, I do not know what the average experience at the other stockyards would be. In explanation of the reduc- [fol. 553] tion in this firm's business between January and February, lambs go on feed, as I explained, the peak movement of lambs from the range country is in September and October. The thin lambs go into the feedlots into the hands of the farmers in the corn belt to finish them and the peak volume finish is off in late December or in January, or the volume decreases until the Coloradoes come in, Colorado usually markets during March, April and May. My recollection as to what happened during those two months is not very clear. I think that the reason for not selling as many sheep in February as in January was that we received less sheep. We do not have at Chicago in our employ any man who buys exclusively. Mr. Hager does some buying and so do I. We also do the selling. I have been engaged in order buying for five or six years, buying for packers, farmers and feeders. Packers plants for whom we buy are located at Milwaukee, Cleveland, Cincinnati and Baltimore. An order buyer must know sheep and he must know markets. Approximately must have the same information as is required to make a salesman. In buying for packers we first quote the market to them and tell them what we think it will be, the usual form is to place an order for so many at the markets. Sometimes they specify the price. However, it is usually at the market or "Use your own judgment." We buy and fill orders from whoever has them to sell, the type we want on the Chicago yards. [fol. 554] We buy from traders to fill orders as well as commission men. The time we start to buy to fill orders depends upon what we think of the market; sometimes we start out early; sometimes even stay late; and sometimes work at it all day off and on. The main thing is to get the thing the man wants, which in the case of these par-

ticular people we deal with, they are usually in the minority, that type of sheep. We started order buying when we established the firm of Merrion and Wilkins. We both advertise and solicit order buying business. We solicit the business from packers throughout the country who we think would be interested. The advertising which we do is the form of personal letters largely in the order buying branch of the business. We do not send out market letters to the buying side at this office. Our main solicitation with respect to buying is done by wire and telephone. Buying on order we buy feeder lambs, stock breeding sheep, fat lambs, fat ewes, thin ewes. We buy on orders for traders or speculators. The class usually bought for the packers is fat lambs, fat sheep.

I do not know how many carloads I have bought on a single day in the year 1932 or 1933 for all combined.

The greatest number of sheep I had bought in a single day in the year 1933 was possibly 10 cars, was not certain. Might be eighter single or double deck, 1500 head.

Explaining the difficulty in buying different classes and grades of sheep, the fat ones and the stockers, buying stock [fol. 555] sheep involves examining them for sex and age and other characteristics and buying them in small lots so that when you have a car, or several cars complete, you have a uniform lot, that is, uniform as to weight, quality, and condition. Buying feeder lambs usually involves sorting those of a certain weight uniform out of a string, or if you buy them in small lots taking off those that won't suit. We are required to buy any of this stuff, they specify the weight usually, and the condition and we must buy them within a pound or two of the specified weight. And buying fat lambs involves handling them for fat, determining whether or not they will suit. We must, for instance, during the early part of the season, buy lambs that will dress 47 per cent in New York. They are desirable, and if they fall below 46, the cost runs too high and we must select the kind that will conform with those dressed weights after the shrink or driftage in weight between here and New York. In buying butcher sheep as compared to stock sheep, the stock sheep are not always available, and it is necessary to buy them in small lots and make them uniform in age and weight and conformation and all that. The feeding sheep are classified as feeders and the breed-

ing are classified as stock sheep. In the fall of the year we buy more stockers and feeders than we do fat lots. Usually [fol. 556] you cannot fill an order for 100 stocker sheep at Chicago within a day. It is a matter of four or five days, generally. Your assumption is based on the fact that they are available, but they are not. I have reference to stockers and feeders. We very seldom ship sheep we have bought by truck.

All other things being equal after the sheep were bought there would be very little difference in the time of handling 100 head from the market by truck and 100 head by rail so far as the commission firm is concerned. In buying for shipment by truck we generally buy smaller orders. In starting out to buy 10 head it would require considerable time in inspecting what is offered in finding 10 head to suit the order and probably as much time would be involved as if you were to buy a larger number. I do not know that it is more difficult to buy sheep on order than it is to sell sheep on consignment. We are not able through the course of a year to fill every order that we receive. The type of stock that is ordered is sometimes not available; sometimes orders are received too late to execute. The kind of orders we usually receive too late to execute are a stocker and feeder sheep. Orders usually specify ship today As to whether the Chicago market could absorb more sheep than it receives, if it were possible to make supplies uniform through the year, we could advance our volume, but be- [fol. 557] cause the sheep acquire the market age different times of year, depending upon weather conditions and that sort of thing, it is hard to make for a uniform or rather a consistently uniform supply on the market. The Chicago market could absorb more sheep if they were available, but could not approximate how many by percentage. The number of carloads of sheep we can buy in a year would depend entirely upon the volume, the receipts, the availability of the livestock, and more than anything else whether or not we have the orders, and in so far as stocker and feeder sheep are concerned, the demand for them during the past year or two has been very light. It is reasonable to think that the demand will increase because of prices advancing now, but, if we were to devote all of our time to order buying alone, I should think we could do more business than we now do. Just how much would be

a guess. Based on the volume we handled last year at the peak season, we could not have handled more business and handled it efficiently. If we had had 50 carloads additional in a week, I would, if that were my experience, have increased my force or made some other arrangement, an arrangement to handle them and give them better service than we would have been able to with our present force. If we had been confronted with that condition for one week only, I would have made some temporary arrangement if I knew it was going to last but one week. I think I would not have attempted to handle it with our present [fol. 558] force. I would say 20 percent of my time is devoted to buying on orders and the balance to sales; during three or four months of a year, we handle very few orders. When we purchased 25,000 head during the month of January, 1932, I think that was the largest month we ever had. I don't know just how much of my time I spent in order buying in January, 1932.

On the Chicago market, in a broad sense, it is generally true that when it is easy to buy, it is hard to sell, and when it is easy to sell, it is hard to buy.

Mr. Charles A. Mallory, a witness called by the Government testified as follows:

Recross-examination:

Direct examination:

I live at the Hyde Park Hotel in Chicago, and I am the salesman for a live stock commission company. I am employed on a salary and a commission basis, also by Wm. Gentlemen & Son. I get a certain salary and then I get a certain percentage or commissions from the business that I control. I have a certain clientele of my own, which might be 100 cars per year and it might be 300 cars, cattle and hogs principally. I sell hogs, and have acted in that capacity for Wm. Gentlemen and Son for four years. On September 1, 1873, I started with a firm that was owned [fol. 559] and controlled by my father as a yardman. I worked in that capacity for about a year. Then I went into the office to have the experience of all branches of the office

work. I stayed there about a year. Then I went back to the stockyards and in about five years from the time I started I began selling hogs. About 1882, my father and I organized a firm and we continued in the commission business under three different names because of partnership arrangements until 1902. In the meantime, my father had passed away and I disposed of the business then u-der the name of Mallory Commission Company, which was doing about the largest business on five of the markets, and went to Mexico City to engage in the packing business. In about a year and a half I came back, and having agreed at the time I sold the company not to re-engage in the business at Chicago for five years, I secured a position in the South Omaha stockyards. After two years there, I was recalled to Mexico City as the packing business had been financed, and remained there for ten years as manager and superintendent of live stock and sales for the Mexican National Packing Company. The Mexican government took over both of our plants and everything that we possessed. Upon reaching the United States in 1915, I rested for about six months and came to Chicago where I was employed by Bowles Commission Company, and had some of the stock in the company; was vice president and a year or so later they opened a house in South Omaha, and I went there as [fol 560] manager for the company. About 1925, The Bowles Live Stock Commission Company sold their Omaha business and I was employed by John Clay and Company, as manager of their hog department, which position I held until the present one. In addition to the hog business, I control, I sell some of Wm. Gentlemen's & Son hog business. They have one salesman besides myself and he is one of the Gentlemen family. The growth of the truck business has been very pronounced and I believe that the records will show that there are more, a larger percentage of hogs delivered at Chicago market this year than for any similar time. The handling of the truck business is more expensive to the commission men and the fact that the direct buying has reduced the business previously handled by the commission men naturally takes that much revenue away from the commission man. There are not half as many firms here now as there were fifteen years ago. I could handle more business if I received it myself. I think I am better able to sell hogs now than I ever was. I have

had more experience. My firm sold one day with four salesmen in the early eighties, 126 cars. I do not think I could sell as many hogs now as ever, because conditions are so different. For instance, it was much easier in my judgment to handle forty cars of hogs under old circumstances with natural competition than it is to handle six cars today. On Wednesday our firm had 400 hogs, exactly, [fol. 561] and those hogs were sorted and sold and it required 44 drafts over the scales to finish the selling. Now, with the old system, you could have 44 loads and 44 drafts and do the work much easier. About 180 of the 400 head came by rail and the balance by truck. Of the rail shipments there were three cars belonging to two owners. I would say there were 25 owners in those coming by trucks. Mr. Alex Gentleman sells the standard grades and I sell the others. The standard grades are the better grades of all weights such as the shippers and the small packers and city butchers buy as a rule. I sell the packing house hogs, the old sows, skips, inferior hogs of all weights, and pigs and rejected hogs and odds and ends.

No hogs are consigned to me; they are all consigned to Wm. Gentlemen & Son. We employ two yardmen to bring the hogs up from the chutes, or from the places where they are yarded from the trucks and to help sort them, and to feed and water them, and to weigh them. I get up to the office at 7:00 o'clock, change my clothes, go up to the chute house, that is the office of the stockyards company, where they post the bulletin showing the arrival of stock consigned to all parties. I get the names of all of the shippers to Wm. Gentlemen & Sons, of hogs that arrive by rail and [fol. 562] also by truck. Then I go up to the selling pens and after the hogs are brought to the selling pens by the yardmen, I sort the hogs up in accordance with my judgment as to how they will be most attractive to the buying interests, and by the time Mr. Gentlemen arrives all of these consignments are put on a card, with the names of the owners, the number of head and the pens in which the hogs are yarded. Mr. Gentlemen looks them over, uses his judgment as to who will be the best buyers for the various kinds, and then the way the business is now; waits for two or three hours before he can do any selling. We have a rule which provides the opening of the market at 8:00 o'clock and closing at 3:00 P.M., but that rule so far

as the buyers are concerned, does not amount to anything, because they seldom start buying hogs until about ten o'clock, except sows and odds and ends which are often sold before nine o'clock. As a rule the kind of hogs I sell are sold earlier than the good hogs. Fifty percent of the kind of hogs I sell are sold to speculators or to small butchers. I sell the standard grades if Mr. Gentlemen is not there.

After sixty years of experience, I would consider that I might be competent to sell the standard grades. Yardmen assist me in sorting hogs. My procedure in negotiating a [fol. 563] transaction, the first thing to do is to decide who would be the best man to purchase them. Sometimes it might be one class of buyers and sometime- it might be another, owing to the circumstances and the conditions surrounding the market. We show the hogs to one speculator and ask him a set price for them. He might bid you 10 or 15 or more or less, but we would trade together, dicker, and if we would agree on a compromise or anything of that kind, we would go out of the alley, and if we could not agree on a compromise or anything of that kind, he would go out of the alley, and I would get somebody else, and we would work that way until I would find someone with whom I might agree, or who would agree with me, as to the value of those particular hogs. In basing my judgment as to the price I am going to ask for hogs, the principal item would be what I consider common sense as to the conditions surrounding the market; the receipts would be one factor, the value of the hogs and hog-products would be another, the price current on competitive markets would cut some figure, and the attitude of the various buyers whom I came in contact with. Intuitively I equip myself with that information every day. The stockyards company maintains a blackboard in the lobby of the Exchange Building and the U. S. Department of Agriculture post on this blackboard every morning the estimated receipts at the principal markets. [fol. 564] That, of course, we see before we go out to sell the hogs. My duties in connection with transactions after sale is made consists in the general supervision of the hogs to see that they are properly looked after by the yard man and do some of the work of that kind myself, and help to weigh them. We help sort them and help to weigh them at the scales. I always help do the weighing. After the

weighing is done, I mark the names of the owners on the ticket and the pen number on the ticket so the salesman can recall when he gets the ticket on which he marks the price just what hogs they are. I mark the price on the ticket covering the hogs I sell. After the hogs are weighed, the tickets for the standard hogs are taken and given to Mr. Gentlemen who is at the head of the alley where we do our selling and he marks those tickets, marks the price on them, and then those tickets and the ones I mark, are put together and sent to the office.

I have quite a good deal of correspondence, writing letters accompanying account of sales, and answering certain letters relative to the hog branch of the business, soliciting business.

I write a letter to go out with each account of sale, and remittances are made by check in most cases.

We handle consignments by rail in which there are more than one ownership in a car. As to how we handle a carlot of that kind, it depends upon how it is shipped in. If it is [fol. 565] shipped in as a co-operative shipment, we always have what they call a tally sheet made out by the manager of the co-op company, which gives the number of hogs, weights, how they are marked, and also the weight of the various hogs, and those hogs, as a rule, unless we have orders to the contrary, are sorted according to grade and sold that way, and then the shrink is pro-rated, and the price is made according to the hogs as sold, either standards or seconds, or whatever the grade may be. We do not always weigh them for ownership, unless we have orders to. We have quite a good many plural ownerships. In the case hogs are received by trucks they are handled much the same way except that they have to be weighed separately for marks. We may sort them and grade them the same as we do the others, but in weighing them, they must be weighed for marks in order to preserve the individual ownership. Occasionally we receive as many by trucks as we would get in a single deck car, not very often, but occasionally. I have observed that there is an increase in the size of the consignments by truck. As a rule it is more difficult and requires more labor to handle truck hogs than it does hogs by rail. In the first place, the consignments by truck are usually small numbers, comparatively speaking, and those have to be taken from the lower part of the yeards

where the trucks are unloaded and taken up to our pens, [fol. 566] which requires quite a bit of time and requires the help of at least two men if we have any number of truck hogs. Then, when they come up to the alley, it requires a pen for almost each bunch unless we sort them and grade them. Then, we can put sometimes two and sometimes three small bunches in one pen, but they all have to be weighed separately which makes more than double the work in weighing the hogs as well as in bringing them up and preparing them for sale.

Whether we sort them according to grade and put different ownerships together, depends on the condition of the market, whether it will be a fast market or a slow market, or a higher market or a lower market, it all depends upon circumstances. We have to use the best judgment we have, taking all those factors into consideration.

The stockyards company men do the feeding. I think 75% of the truck hogs are fed. There is no difference in handling second hogs from fresh hogs, excepting in the condition of the hogs. By condition of the hogs, I mean some of the hogs that are turned over to the commission men by traders are what we might call the poorer or second grade; very seldom have any of the top grades because they handle them as well as we can. As a rule the less desirable grades or poorer grades are harder to sell, depending on the condition of the market.

[fol. 567] The demand, the regular demand for the poorer grades is not equal to the regular demand for the standard grades, and if we have a surplus of the poorer grades, then it is hard work and takes a lot more time to find a satisfactory buyer for that class of hogs. The usual outlet for that class of hogs is the city butchers or city packers. They buy most of them. They are handled in small lots, comparatively speaking. As a rule, trader hogs are fed before they are brought to our pens. Sometimes the speculator himself would bring them or have one of his men bring them to our pens.

I could not attempt to tell you what factors determine the number of hogs that a salesman can sell. I would not want to attempt to describe what might limit or what might not, because there are so many different mentalities and different human beings.

As to the factors that would limit or determine the amount of hogs that I could sell, whether or not I could physically get around during the session to sell, probably would depend a good deal on the number of hogs I might be able to sell, and a great deal would depend upon the condition of the market. If you had a fast market you could sell a whole lot more hogs than on a slow dull market such [fol. 568] as we are having now.

By what I consider a fast market is a market where we have good competition, where buyers come out early in the morning and act as though they really wanted to buy hogs, and after looking around for a short time and finding that they are unable to buy their hogs at the price they originally bid, they raise their price and meet the demands of the salesmen and the sales are made quite promptly. On a slow market such as most of our markets have been for some time past, outside of a few odd hogs and a few sorted hogs which shippers occasionally buy the regular buyers start out bidding anywhere from 10 to 25 cents lower than the prices of the day before. The salesmen do not believe they would be justified on behalf of their shippers to sell the hogs on that basis and the trade is often slowed up for four or five hours, as it has been recently, and hogs were not sold until after 2 o'clock; when on a fast market the hogs would be sold before 11 o'clock.

As to how such conditions affect my operations as a salesman, on a fast market we are able to get earlier in the day prices which we consider are satisfactory or would be satisfactory to our shippers and also to ourselves. On a slow market such as I have described, it is very difficult for any salesman to make up his mind during the first three or four [fol. 569] hours just what to do, whether or not something might not happen to cause the buyers to raise their hand, as they have done on a number of instances, such as they would do, and in that way we could hold off until two or two thirty in the afternoon before selling, which I consider a slow market. Sales on a slow market are not as satisfactory as on a fast market, but as a rule the trade has been educated to sell their hogs each day as they arrive to the very best advantage possible. We do not make a practice of holding hogs over for future sale. And that is my general observation, with some exceptions, of the methods em-

ployed by other commission houses selling hogs. Sometimes we are forced to carry over a few hogs.

Q. If you had all the hogs you could handle, how many do you think you could handle in an ordinary day on this market?

Mr. Boyd: I object to the question for the reason that the witness has not indicated that that condition has prevailed with him or that it can under any hypothesis prevail with him. The receipts to his firm and to other firms are seasonal. The receipts that he can sell depends upon the consignments, upon his ability to persuade shippers to consign livestock either to him or to William Gentlemen and Son. It will be of no probative value in this case for this witness to attempt to guess at how many he can sell without any factors whatever being given to him. He has described the difference between slow and fast markets; he has described that there is a difference between hogs that he sells and hogs that other salesmen for the same firm sell, and that it is generally incompetent.

Mr. O'Bryan: I wish to object to the question on the ground that it only takes into consideration one factor, namely, that all of the hogs he receives under current con- [fol. 570] ditions, which I imagine he is testifying about, can be disposed of on a dull day as well as a fast day, and that it does not take into consideration any of the other factors such as the prices for which they are offered, the packers' demand, the yield, or innumerable other items which I think should be considered or asked about before the witness is asked to answer an ambiguous and general question of that type:

Mr. Dagger: We submit, Mr. Examiner, there is no ambiguity in that question.

Mr. O'Bryan: All right, I will point out just where it is ambiguous.

Mr. Dagger: Will you let me finish, please?

Mr. O'Bryan: Yes, finish.

Mr. Dagger: Objections have continually been made in this record designed to confuse and intimidate the witness, all of them based on the general proposition——

Mr. O'Bryan: I object to the statement "intimidate".

Mr. Dagger: Let me finish, please. All based upon the proposition that the witness has not told the difference

between an active day and a dull day. Now, that this witness has honestly and fairly stated in this record the difference between a dull day and an active day, counsel still is not satisfied and wants to still further confuse and muddle the record, and we insist that the witness be permitted to answer a fair, straightforward question in a fair, straightforward manner without being confused and intimidated.

Mr. O'Bryan: I object to the use of the word "intimidated" and I will ask the witness if anything I have said to him while he has been on the stand has been in the nature of an intimidation.

The Witness: Absolutely not, and nobody else has.

Mr. O'Bryan: That is right.

Mr. Dagger: Mr. Examiner, counsel now requests that he be permitted to examine this witness and ask the ques-
[fol. 571] tions and not until the Examiner gives permission I request that no one else question the witness.

Mr. O'Bryan: It is perfectly all right for the Government to assume anything and no one can run counter to it.

Mr. Dagger: It is perfectly proper for you to make objections.

Mr. O'Bryan: Well, I am making an objection. You state that there is no ambiguity connected with your question and I will now point out to the witness the various ambiguities which are in your question, First, it is not a question of a dull day or a fast day. It is a question of price. It is quite apparent that this witness could sell all the hogs that he could lay his hands on if he was giving them away, but quite the contrary if there was no demand. If the packer buyers had their coolers full of fresh meat, if they had killed heavily on directs, three days prior to the time and they were not bidding for hogs, he could not sell on any basis. Those are the kind of factors that I want this witness to consider before he answers an ambiguous question of the kind that was asked him.

Mr. Dagger: Mr. Examiner, I move to strike the statement of counsel inasmuch as he represents only the order buyers.

The Examiner: Motion to strike denied. Now, Mr. Boyd.

Mr. Boyd: I have no desire to attempt to intimidate this witness. All I wanted is that he be certain he understands the question. The objection I raise to the question is to its indefiniteness—that it sets forward no facts as to the

nature of the hogs when they arrive or anything about it. It just overlooks the entire marketing process of Chicago and attempts to ask this witness to make a surmise as to what he could do if he had it to do.

Mr. Dagger: I further move to strike the statement that Mr. O'Bryan made on the ground that it purports to be testimony in this record as to what marketing conditions are and what a witness should consider, attempts to be a statement of facts injected into the record by some one neither sworn or qualified.

[fol. 572] Mr. O'Bryan: I might state that if counsel for the Government would ask for the facts as to what create a market on this record, it would not be necessary for counsel for the Respondent to warn witnesses as to what those facts might or might not be.

Mr. Dagger: I might say for your benefit, Mr. O'Bryan, I feel perfectly competent to examine this witness.

Mr. O'Bryan: I know you do, there is no question about that, but you want to examine him in your own way.

The Examiner: Anything further, gentlemen, on the question? Objection overruled. Read the question.

(Whereupon the question was read.)

The Examiner (continuing): Now, again, Mr. Mallory, all I am interested in is getting just impartially the facts, and again I am going to say that I want you to be just as fair and accurate and definite and complete as you can be, so that we can fairly get the facts which is all I am interested in.

A. I would not feel competent or able or willing to even attempt to say how many hogs I could handle except on certain days when the hogs were really in my possession and I knew just what the market conditions were, but I will state that no matter how many I had, I would make a very heroic effort to secure for the shippers the very best price the market would warrant.

Mr. Dagger: Will you read the answer, please?

(Whereupon the Answer was read.)

Mr. Dagger (continuing): I take it, then, you have not any idea what your capacity is as a salesman?

A. I would rather somebody else would judge that.

Q. You would not know that, even on the basis of your many years of experience?

A. I do know my own opinion of it, yes, but I would not think my own opinion would be worth much. I have never failed yet to sell all the hogs that were put in my possession to sell.

[fol. 573] I would not feel competent or able or willing to even attempt to say how many hogs I could handle except on certain days when the hogs were really in my possession and I knew just what the market conditions were, but I will state that no matter how many I had, I would make a very heroic effort to secure for the shippers the very best price the market would warrant. I would rather somebody else would judge my capacity as a hog salesman than myself. Even on the basis of my many years experience, I do know my own opinion of it, but I would not think my own opinion would be worth much. I have never failed yet to sell all the hogs that were put into my possession to sell. I do not believe in superlatives, but I do believe I am one of the best (salesmen) that there is. I do not know the capacity of the best salesman. I think I can sell as many hogs as any other salesman on the Chicago market under the same conditions. I cannot remember the largest number of hogs I have sold in 1933 on any one day. I can handle more hogs arriving by rail than I can coming by truck. It would be hard to tell, but I would say 25 percent more any way.

The character of my operations in the solicitation of business, is to look up people who have stock to ship. If I am not already acquainted with them, I try to get acquainted with them and talk to them about the situation, [fol. 574] the business, and about their stock if they are feeders, and do everything I can to ingratiate myself into their good will and before I leave them I try to have them promise they will ship to William Gentlemen and Son.

I have not been on a soliciting trip for over a year. Prior to that time I took part of Nebraska and part of Dakota and a few places in Iowa. Some of the firm themselves take occasional trips out, but they do not do what I would call a general soliciting business. They go out to feed lots mostly within a radius of 150 miles and they have a very large acquaintance with people who live within 150 miles

of Chicago and they are constantly requested by many of these people to come out and see their stock and pass judgment on how it is doing and about when to market it and all that, and that covers most all of it. Someone in the firm makes such trips whenever requested. They do not get around to see all the customers of the firm. We don't make any distinction between the man who ships by rail and the man who ships by truck, so far as the business is concerned.

At the present time I think most of the soliciting is confined to truck business because it is the season for it and it is all nearby stuff that all comes in by truck, most of it within 100 to 150 miles of Chicago. It is just a seasonal arrangement. I make contacts and follow them up by writing letters. I use no other means. I do not find that particularly satisfactory. It does not give as good results as [fol. 575] it used to. I account for that because the reports go out from the stockyards here two or three times a day, giving the exact situation regarding the classes of livestock, that is the market for the classes of livestock and all of these people have radios, and they all know within a few minutes how the market is here exactly and they do not care about a letter that is a day or two or three days old, so far as the market conditions and prices are concerned. Prior to that time, they used to be glad to get the letters and the information contained in the letters, but not now.

Mr. Preston B. Unthank, a witness called by the government testified as follows:

Direct examination:

I reside at 6749 Ridgeland Avenue, Chicago, Illinois, and am a member of the firm of Adams, Corrick & Hatch, J. M. Corrick and Fred Hatch are my partners, and Mr. Adams is not in the business any more. I am hog salesman and the bookkeeper. We have four employees; Leo Keleher, a yardman who sells a few calves and steers; R. M. Blakemore, a yardman and also does our stenographic work, typewriting, and takes care of our lists, gets our circulars ready to go out; Henry Moon, I presume would be an employee. We handle his business on a commission basis; and Warren Grange is on the same basis as Mr. Moon. In the case of Mr. Moon and Mr. Grange

[fol. 576] their salary is based on their commissions. When we are busy they help us out a little. If Mr. Moon is away we sell his business for him, if he is here he sells it himself. We sell all of Mr. Grange's stuff. He is not a salesman. We charge Mr. Grange fifty percent of the commission as our compensation. The bond which we give protects the transactions of Mr. Grange and Mr. Moon. We get forty percent of the commissions on Mr. Moon's business, whether Mr. Moon sells his own livestock or not.

I came into this business in 1903. Was a yardman for two or three years, about two years in cattle, and when the cattle were yarded I went to the office, used a typewriter and took care of that class of work, and perhaps a year or two later, I was put in the hog alley as an alley-man and finally got to selling hogs; and I would judge that close to 25 years I have been a hog salesman. I sell all the hogs for my firm, except some that Mr. Moon may sell. I sell approximately 65 or 70 percent of hogs billed to our firm. I don't think there is much difference in selling traders' hogs and hogs from the country. These yard traders, you know, often times have hogs over. They will buy them too high and the next day perhaps they will want me to sell them for them or somebody else and they cost for example, we will say they cost 5 cents a pound and they do not want to take a loss, so they will tell me not to sell them for less than 5 cents. Well, I may work all day and [fol. 577] not sell them, so, perhaps there is just a little more work and trouble in handling those shipments than shipments direct from the country where you are not tied that way.

I am in the hog alley in the forenoon, sometimes I am done by ten or ten-thirty and occasionally I am not through until two or two-thirty but that is very rare when a man is not late, and after that I am in the office until I am done; and I have been there until midnight lots of times.

There is no difference in the amount of office work in handling the same number of head arriving by truck as arrive by rail if all are sold in one draft. As the usual proposition I do not find that a truck consignment is sold in one draft. It is most always sold in more than one draft.

So far as our business is concerned, I believe there are more plural ownerships in the truck business than in the rail business.

Insofar as our expenses are concerned, we economized about to the limit in 1932. We could not do much more to economize in 1933. We are watching pretty closely the Drovers Journal bill that we have, and I think we have cut that down considerably over last year, as far as we have thought advisable, and I think perhaps, we are doing a little less circular work than we did last year. Those are [fol. 578] the only two items I think of now. My personal opinion is that the reduction in sending out these circulars and market letters have not had any effect upon our business.

I do some personal soliciting. I have not been out at all this calendar year. I know I went out once over a week-end last year. I don't know whether I went out twice last year. Mr. Corrick, Mr. Hatch, Mr. Moon, Mr. Grage and Mr. Keleher do personal soliciting. I do not know whether there has been less solicit-ion in 1933 than in 1932, with reference to my firm. I think the reputation of our firm brings us more business than the circular work that we do. In the case of a double deck car of hogs, I think I would not have over four sorts in a single ownership; there could be seven or eight. I think there would be 100 buyers in our division; packer buyers, traders, order buyers, yard traders far outnumber the packer buyers and order buyers. When we go out into the yards we have the estimated receipts which are furnished us by the government, and the holdovers from the day before. We have the prices of the day before and with that information I would estimate the price I would want to sell hogs for on that day. We usually ask more than what we think the hogs will bring and if the first man we show the hogs to bids on them, the price that we have fixed in our mind is the price we think they will probably sell for. We don't usually sell them. [fol. 579] If we think hogs are worth $5.00 flat, I would ask ten to fifteen cents more than that. It has been more difficult to sell hogs during 1933 as compared to 1932. The market is different, the demand is lacking from the packers; the shipping demand is a lot less this year, and perhaps there were spots last year when it was no better than now. But as I can recall last year, it is a good deal harder to get satisfactory prices for the hogs. I think we work harder and work longer hours in 1933 than in 1932. I think I put more time in this year than I did last year on fewer hogs.

It is hard to say what are the factors that impose a limitation upon my ability to sell. Of course, the one thing that makes it hard to sell is the way the salesmen differ from the buyers on the value of the hogs, and we have less competition up there now than we ever had. We have days up there when the market will finish good, say today, and tomorrow's run will be light, and we naturally figure that they will be decent buyers today, but they will be slow to start, and when they do, they will want to buy hogs lower with no reason that we can figure. When the demand is good, it is a good market; what we call a fast market; and if the demand is bad, it is a slow market, draggy market. There is a market for everything that comes to the yards. Considering my experience, assuming that I had all the [fol. 580] hogs that I could handle in 1932, and assuming all other conditions exactly as I did find them, in my opinion, I could not have sold any more than I did sell. I think I am as good a salesman, hog salesman, as there is on these yards. I do not know whether I could sell as many hogs as any other salesman or not. My answer would be, I don't know.

Cross-examination:

Referring to Government Exhibit No. 15, Exhibit "C", firm No. 2, I am not shown as doing any selling. We made a profit in 1932. Referring to the same exhibit, schedule 2, owner 1 that represents my drawing account.

The witness was temporarily excused.

Mr. Martin J. Brennan, a witness called by the Government testified as follows:

I reside at 5643 South Wood Street in Chicago, Illinois, and am a bookkeeper for Stafford Bros., Live Stock Commission. I have been a bookkeeper for this concern for four years. Before that was yardman. Was yarding and weighing from 1921 to 1929. I have a bill clerk and one yard man that helps me with the office work. They help make up the bills.

S. B. Stafford is the sole owner of Stafford Bros. We have ten employees, William Otto, a butcher salesman; [fol. 581] W. M. Ward, a cattle salesman; Roberts Sarsfield,

yardman; James O'Brien, yardman; John Grant, hog salesman; L. H. Wagener, yardman; John Coleman, yardman; James Rodgers, yardman; Frank Marsch, sheep salesman; Emma Schmidt, stenographer; John Fitzgerald, bill clerk; M. J. Brennan, bookkeeper. Mr. Stafford sells cattle. Stafford Bros. also engages in what we sometimes call clearance operations, clearing other commission firms, we clear the business of W. E. Young & Co. We have filed a schedule of rates and charges for clearing services. We render different services for different parties whom we clear. In the case of W. E. Young & Co., a market agency which buys and sells livestock, we do selling for them; we do buying for them; we do all the office work, as well as all the yard work. We do not do any soliciting for them. We send out a small circular for him.

We clear Callahan Live Stock Commission Co. He sells his own hogs. Stafford Bros. sell his cattle and do the yarding on both cattle and hogs and handle all his book work. We also handle his advertising. We send out his circulars.

We clear the business of Alex Rinderle Company, which is a sole proprietorship. Stafford Bros. buy and sell his cattle and hogs. He has another party handling his sheep, [fol. 582] the business being run through our office. We do his bookkeeping. Rinderle has a sheep salesman who is paid by Rinderle. After the sheep salesman's commissions are deducted from Rinderle's gross sheep commissions, the difference is divided between Rinderle and Stafford Bros. on a fixed charge. John A. Havey sells Rinderle's sheep.

We clear the business of Clarence N. Ball. We have cleared his business for about three months. He has had no cattle or sheep. I would say that he would have six or eight cars of hogs in a month. We do Mr. Ball's advertising to the extent of sending out circulars and writing letters; sending out account sales. Remittances are made by Stafford's checks. With the exception of Alex Rinderle & Co. our bond covers the persons we clear. Rinderle has his own bond. We clear the business of an order buyer by the name of Broberg, as well as the business of the John A. Havey Live Stock Commission Co., who specializes in selling sheep. Mr. Stafford will handle all the bookkeeping for Havey; also handles the sending out of market letters or advertising matter. Makes remittances on behalf of Havey, sending out Stafford's checks in payment of the livestock.

In the case of G. G. Broberg we pay for his purchases, collect for the proceeds of the stock bought, and handle his books and records. He buys cattle and hogs on order. He [fol. 583] buys his own cattle and Henry Keiner buys the hogs. We also clear a trader by the name of Charles Eitel. Based upon my experience day in and day out, assuming that we had ten account sales to make out, from the time we actually start to work to make out these account sales, it would take us from eight to fifteen hours. To make out an account sales of a carlot belonging to a single owner, sold in one draft, one account sale would take from fifteen to thirty minutes. If the livestock came in by truck it would take from ten to twenty minutes. It would take about five minutes to make out an account purchase.

George H. Baker has a little business of his own, which is cleared by Stafford Bros. and is billed in Stafford Bros. name. He sells his own hogs and Stafford Bros. sells his cattle and Stafford Bros. make up his bills.

Cross-examination:

The processes in connection with office work are governed by the market, to a great extent; if the sales are made late in the day, it retards the work or the finishing time of our duties in the office. The office force and myself are pretty busy throughout the day on most days of the year with the exception of Saturdays and Sundays. Persons cleared by Stafford Bros. have to stand the expense of their country solicitation. Mr. Brennan was temporarily excused.

[fol. 584] Mr. L. Audrey Williams, a witness called by the government, testified as follows:

Direct examination:

My address is care of C. A. Kleman & Co., Exchange Building, Union Stock Yards. Am engaged in the order buying business and am an employee of C. A. Kleman & Co., purchasing agents, and have been since 1927. C. A. Kleman & Co. is a subsidiary of John Clay & Co. I was in the employ of Morris & Co., packers, as sorter and buyer in later years; with the firm of C. O. Robinson & Co., as salesman for about five years. I still sell C. O. Robinson's

sheep on a commission basis of about 37 per cent. That was after I left Morris & Co. I handled sheep exclusively while with Morris and with Robinson. I did very little buying for the Robinson firm. I do all the buying for C. A. Kleman. Mr. Kleman organized the buying business under the name of C. A. Kleman. He was at that time the sheep salesman for John Clay & Co. Our orders come from eastern independent killers. The orders are usually received each day; cannot be depended upon as a regular order from day to day, and you might receive an order one day which you would be unable to have fill- that day; that you could not carry over until the next day, and they are usually for killing classes of lambs or sheep, either solicited by wire early in the morning or by a telephone [fol. 585] call; often at the customer's suggestion we call up and find out what he wants for the day, which is done at the expense of C. A. Kleman. Our customers do not place standing orders that can be depended upon. We have orders occasionally for breeding stock, feeding stock, but the big portion is made up of killing classes of lambs or sheep. In the case of fat sheep, they are mostly fat ewes.

During the winter months I am usually in the office very near six o'clock in the morning, during the heaviest buying season, which is during the winter months.

The heaviest buying season starts in with a little spurt along the latter part of July on through August, and it will die down until along in October, and from October up until May the orders come in regularly.

Sometimes we have the orders early in the morning, or possibly the afternoon before, but in many cases with the smaller killers in the east, the market conditions regulate the placing of their orders a good deal more than it does with the bigger people, and it is often that we must wait to see the action of the market before we can receive a definite order for them. They may send their order to some order market. The customers will often ask for the opinion of the market, or the possible prospect of the purchase price of a certain class of lambs, which we communicate to [fol. 586] them either by telegraph or by telephone, and when the information is received by them they will tell us whether or not they have any orders to be filled. I usually use my judgment, although some of the small outfits

generally put a limit, depending upon the dressed market conditions. There are a very few of the smaller killers in the east who will often order a full deck of lambs to be shipped with a single deck of calves or hogs, but most of them order one or more double decks. My procedure in filling the order after I have received them is in locating the type of stock I want to fill the order, which means careful looking over of the available supply that happens to be on sale that day. I seldom find them sorted according to the way I want them. I buy them with a specified sort,—it all depends, of course, upon the kind of an order you have. Nearly all of the small killers in the east handle a different class of stock, some of them want them real good, some of them have a strictly kosher kill, and they will require a certain class of livestock.

If the livestock does not happen to be priced to someone else, the commission man will usually price them to me. We make all of our purchases from commission men. At various times we might need a few odd lots to make up car weights, which we would buy from traders on the [fol. 587] market. As the usual thing the commission firm prices the sheep first. In case the order is placed at a price, often the early indications are very misleading and you think you can fill it at the price, and maybe you cannot; or you think you cannot and maybe you can. Under ordinary circumstances it makes it easier to be able to use my own judgment as to price, there are times when the conditions of the market, the stipulated price really does not make any difference because it happens to be over the limit that lambs can be purchased for; in which case I will buy them for less than the price named in the order. In arriving at the market value or what I will pay for a lot of sheep, a lot depends upon the size of the run around the circuit, at the various markets; the general undertone or feeling that you get through your communication with your eastern customers, and generally the action of the packers, which, of course, at times is very misleading. It sometimes happens that the packers seem very anxious to buy stock or would lead you to think that they were early in the morning, and yet the market will work out lower.

It is hard to explain what is the nature of the activities of the packers that make it appear that they are very

anxious to buy. I just have to kind of sense it or feel it myself.

[fol. 588] I usually get out in the yards by seven thirty. Mornings when the orders are rather heavy, probably by seven o'clock. The market does not open at that time but I go around the sheep pens and look at the sheep. Other buyers are doing the same thing.

I never buy sheep for the purpose of filling an order before I have actually received the order. I only buy for the orders actually in hand. I usually try to fill orders as promptly as possible, but market conditions often delay the purchase until a very late hour. It depends upon the supply available, whether the order buyers are more active on the market in the early part of the day than the packer buyers and other buyers. It is not often the case that I will purchase the first lot I get into; market conditions in recent years make it rather a long, drawn out session. We might have bought them prior to 1 or 2 o'clock if the orders are not too heavy, but it is often close to 6 before we can get them together and get them sent to the chutes. We try to get them out before five o'clock. There is a demand for western ewes as breeding ewes, from any place east of here, including Illinois, Wisconsin, occasionally. When I get an order for feeding lambs the order specifies the weight and quality. The bulk of feeder orders received on the Chicago market that we come in contact with and know usually run from 55 to 60 pounds. Then, there are other [fol. 589] types of feeders that want lambs weighting 65 pounds, and those people in New York want lambs weighing down around the 45 to 50 pound mark. Some feeders want lambs fatter or thinner than others because of different methods of feeding. Whether we are able to fill orders of that kind depends upon the supply. Occasionally when a load can be bought where they look worth the money, they can be bought out of second hands to good advantage.

The breeding ewe order is a tough proposition, because it usually calls for a carload of a certain age, either a carload of yearlings or a carload of yearlings and twos or a carload of twos and threes, mentioning ages; each animal must be mouthed and inspected for general health conditions, as well as you can determine. I physically handle every animal in the consignment. I do not necessarily handle every fat lamb individually. If a commission firm

has 250 fat lambs in a pen and I have an order for lambs of that general character, I determine whether those lambs are satisfactory for that order by handling the lambs with my hands on their backs and on the loin. I think I can usually tell the weight by looking at the lamb. There are rare cases where buyers or salesmen get away off on their judgment of weights. I would say that in a load of lambs where you would handle some lambs that lacked a little (flesh), you would naturally handle them 100 per cent [fol. 590] longer and oftener than you would when you walked in and handled probably 20 or 25 lambs and did not hit a bad one. If I found the first few were good, I would not handle so many, but if I found them a little poor, I might handle a great many. The trained eye does not enable me to measure satisfactorily the condition of the lamb nearly so well as my hands. That is caused by the presence of the wool on the sheep's back. We buy more wool lambs than we do clipped lambs. A good many of our eastern customers run their own wool pullers and naturally want wool skins to work on, although there are periods of the year when they cannot be secured and they must take clipped lambs. Whether or not it would be difficult to buy would depend upon the amount of orders you had and the number of lambs suitable to the orders that you would find in any one alley. It might make it a whole lot easier to operate if you were in a position to buy 8 or 9 or 10 cars of lambs from one man, if you had orders that day for that amount than it would to go in and pick one or two loads of lambs and buy one or two loads of lambs out of an alley of 10 or 12. By having the supply distributed among many salesmen it would be harder to get as many bought, not that it would affect the price to amount to anything. Sheep and lambs that I buy are weighed to C. A. Kleman. After buying the lambs they must be looked over for any possible sort and weighed probably in various lots, car weights [fol. 591] or counts which I usually do. Of the purchases that I make the only thing I would have left over would be a small lot which would consist of a number of animals that would cause it to be too much weight in the car, that would be all, not because they were not desirable. In such a case as having too many to put in a car, I usually make arrangements for some one else to take them before they are weighed to C. A. Kleman & Co. In shipping lambs

from the market we make up a shipping order delivering these sheep to the railroads on whatever road they happen to be going out, stated as to who is to receive them in the east, and accompany this order with a delivery order, and the yard company delivers that car of sheep or cars of sheep to the loading chutes to be loaded into the railroad cars, and these shipments, of course, are checked out of the sheep house by us as they are being counted out, because often on a big day's shipment, it is confusing. There are a lot of counts alike and a lot of chute numbers that sound alike. After we have given the shipping order to the yard company, the sheep leave our custody and are in the possession of the stockyards company who actually does the physical loading into the cars.

The work of sorting sheep as to whether they are made bofore or after purchase, all depends upon the class of stock that is being handled. At various times of the year [fol. 592] there are several sorts must be made of each load before they can be shown because they contain several classes of each age, that one age would interest one buyer and might not interest another buyer. This happens with native shipments that would have native spring lambs, clipped lambs, or so called yearlings now, old sheep that would be fat and thin, and each one of these classes would have to be sorted off by themselves because the man that might went to buy the spring lambs might not want to buy the clipped lambs, and the man that buys the ewes would not want any of the other lot. They must be segregated. Western shipments often come down in mixed ages and they must be sorted. The actual weighing begins depending on market conditions. Often it will start early in the morning. It might not take place until noon. In most instances order buyers usually buy first.

If sheep are available on the Chicago market, as to the limitation of the number of orders which I can fill in a day's time, it would just all depend upon how many lambs you can get to and get bought. It would be almost impossible to say definitely how many you could get bought any one day because the market conditions make each day's trading so different. Some days it is easy to buy and we will have a dozen loads and the next day you work your head off to [fol. 593] get a single deck bought. It is [redacted] experience that conditions vary from day to day, almost from hour to

hour. I try to evaluate those changes and meet changing conditions. If I did not, I would not stay on the market very long. Taking conditions as they exist on the Chicago market, as to the number of head I could buy in a year's time, it would call for just about the same kind of an answer which I just made. You could let your imagination run loose and just give any amount. Whether the Chicago market could absorb more sheep if it received them, I would not want to answer definitely, but I have seen it absorb a whole lot more than we are getting now.

Our orders are distributed throughout the week from Monday to Friday inclusive, and once in a while on Saturday we have an order. Usually Thursday is now the slow day of the week, so far as orders go, on account of the shortening of the running time on the railroads from here east.

As to whether I think I could have filled more orders during the year 1932, if I had had them, I really don't believe I could answer that question definitely, because there are days that it is real easy to buy them it seems, and then there are other days it is hard work to know whether you are going to get your orders filled or not, and [fol. 594] you often go short. I have never turned down an order because I had too many to buy.

My chief expenditure in getting business is for telephone and telegraph bills which are incurred almost entirely for the purpose of getting orders and advising of purchases. With reference to spending money for telephone or telegraph calls to try to get an order, in reply to an early marketing wire, giving the prospects what is on sale, they are liable to wire us and ask us if we think we could fill an order for them, and we naturally have to spend the cost of the telephone call or wire to give them a reply. I won't say that I have ever been completely shut out, but very near it. If we have the orders, we aim to get our share of them. If a customer or former customer has been slow pay on previous orders I would refuse the order. That does not happen very often but there is quite a bit at stake.

I could not answer definitely as to the largest number of carloads that I purchased on any one day in the year 1933.

I really do not know if I could buy as many sheep as any other buyer on the market. Our eastern clientele is not a constant factor, the same buying from me from week to

week or from month to month throughout the year. Dur-
[fol. 595] ing different periods of the year they do. At this time they do not. They are securing their lambs at other markets. It would be almost impossible to forecast at the beginning of a year as to about what our highest business is going to be as far as the number of orders I will get. One year's experience in this business is not a criterion of the year that is to come. I have not the slightest idea of what to look forward to in the line of the action of the market, the number of orders, as conditions all over the country tend to cause the orders to fluctuate one way or the other here. It is not necessarily harder to sell sheep than it is to buy them. It is about a stand-off, I would think. The salesman would have to prepare his stuff in order to get it in the position to be sold that the buyer would not have to do. All the buyer would be interested in would be buying them where the salesman would be getting them ready to be sold which would take several more operations. If I had an order to be filled where I had plenty of latitude with reference to prices, meaning, by that, that the price limitation was not great, and I were able to go out into the market and feel free that I exceed the price of sheep being made by other buyers, in that situation, it would be easier to buy sheep than it would be to sell them. The market conditions really have a tendency to make it easier to buy or to sell. I would not want to say that any one buyer could buy more than any salesman could sell, or
[fol. 596] any salesman could sell more than any buyer could buy.

The witness was temporarily excused.

FRANK MARSCH, a witness called by the Government, testified as follows:

Direct examination:

My name is Frank Marsch and I live at 8041 S. Elizabeth Street, Chicago, Illinois. I am at present a sheep salesman for a lot of different firms and individual men that clear through the firms, some firms have eight or ten men, they will handle their stuff. I do not sell anything but sheep. I do not sell for whoever wants to employ me for

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that particular day. I have regular firms and the people who come in there *to* do their business through these firms. I sometimes buy sheep on order but that is the unusual thing. Some months I might buy two or three loads. My buying business would be less than five per cent of the total business done. I have been at the stockyards since I was nine years of age and have been selling sheep for twenty years. I was employed first by the Western Union Telegraph Company and then I went to work for Morris & Co. I worked three years for the Western Union and worked for Morris running an elevator and finally drifted [fol. 597] into the sheep house in 1893. Was a driver from the scale. I did that for a few years. Twenty years ago I went to work for a man by the name of Scottie Mitchell. He was handling his stuff and I was working for him and selling extra and he got killed and I got the situation of selling sheep. He was handling and selling as I do now. I have been doing this kind of work for about fifteen years. During the four years previous I was sorting stuff and selling the odds and ends for Mitchell. I have two employees. My name is on all the bill heads of the firms I work for, Northwestern Live Stock, Stafford, Swiney. I have no letterheads. I mean my name is on the firm's letterhead for whom I sell. I do not have an office force. The names of my two employees are Edward Marsch, my son and John Sheehey, my son-in-law. My son has been with me going on three years and my son-in-law has been with me for about ten. Edward Marsch sorts up the stuff as it comes in and feeds and waters it, and weighs it when I get it sold. Mr. Sheehey does the same. I am the only salesman. I sell for Northwestern; Stafford; Swiney; Adams, Corrick and Lewis; Patterson Bros., and Strader Bros. also Walters Bros. and Schroeder Commission. In odd lots I get ten cents a head for selling and we make the same charge for each firm. Odd lots up to sixty head, ten cents per head, [fol. 598] and after that it is $6.00 a car, but there are very few cars we get. We sell for ten or a dozen individuals that clear their business. We make the same charge to them. All I do for the firms I work for is actually sell the sheep and fill a few orders I get to buy odd heads. The sheep are never sorted when delivered to us; we do our own sorting. I have an alley and the sheep are driven to

the yards. I think that would be the only difference, except possibly the attitude of the buyer. As to the attitude of the buyers toward trucked stuff and carlots and carlots arrival, it depends upon the individual. Some have told me they would rather buy truck stuff; some have said they would rather buy them off the cars. I believe it would be fifty-fifty. A good many things enter into that, Mr. Miles. The distance the stuff has been trucked, the way they look, and everything else. So many things enter into it; it is pretty hard to answer that question straight out.

Redirect examination (continued):

I stated on cross-examination that the operations of our firms differ—that is, we operate under different conditions than the other concerns. We have our other connections. As I explained before, we have our other firms at our other markets to influence business to us. We also have our loan-[fol. 781] ing business that influences business to us. I do not believe that other firms on the Chicago market do the same thing—that is, no other firm that does the same thing that I know of. There might be possibly some firms on the Chicago Yards that negotiate loans and assist in negotiating loans on livestock. I don't have any knowledge of any. As to whether I have told you all the different conditions that, in my mind, affect the operations of Clay and make them different from the operations of other market agencies—as I said before, our firms at the other markets will accommodate their shippers by doing a good many different things for people in their various territories, and on account of that we have business sent to us that we would not ordinarily receive. I believe the fact that we purchase stuff on other markets for customers also brings stuff to us here. I do not think there is any other firm that is just exactly like our firm.

It is possible that there might be one, or two, or three firms that may have connections at one other market. We have connections at, I think, eight of the other markets—eight or nine. I could not say for sure whether there actually are other firms on the Chicago markets having connections at other stockyards. I do not know how many carloads either of cattle or all kinds of livestock that is shipped to us at Chicago Yards from other John Clay houses. I could not give you exact figures. There have been weeks when half

of our business has been handled at some other point and [fol. 782] forwarded on here. On some of this forwarded business, we have to do the same work on such shipments as we do on the original producer's shipments; and some of them have been sorted and handled in such a way that we do not have quite as much work on them. It would be impossible to approximate the percentage. When going out to sell cattle, generally, our salesmen in the different departments agree amongst themselves what they will ask for them. There is no higher officer who does direct our asking price. I know that there are other houses of John Clay & Co. besides St. Paul that loses money. The losses are incurred in the commission business. I am positive of that. Working with the headquarters of John Clay & Co., I know their business and I know I am pretty familiar with their losses and their profits. St. Paul, Ogden, Utah, Ft. Worth, Sioux City, Omaha and St. Louis houses of John Clay & Co. have lost money this year. Sioux City is an old house. I think Omaha shows a big loss this year. St. Louis, I think, has shown a loss since our commissions have been cut.

Let me make this clear to you that our losses in our loan business are not shown in our commission business—neither do any of the partners draw any salary out of any of the houses. If there is any profit at the end of the year, they get it. The loss that I have mentioned at the different houses have occurred only in the commission business and not in the loan business. Assuming that a market agency on these yards received and sold but 500 cars of cattle per year—no hogs or sheep—should the rate be high enough to [fol. 783] pay the owner of that business the same salary that I am getting, in addition, of course, to his actual operating expenses? If you put the question like that to a business firm, regarding the cost of anything, you know it takes time to figure those things out. I am not so smart that I could give you those answers right out of the air in a second; it takes a long time to figure out these things. But I can answer it if you will give me proper time to analyze it and figure it out. I don't feel that anyone wants or should have $75 a car for selling cattle. I don't think anybody wants that rate. We try to be fair, I think, in our rates.

MR. WILLIAM C. YOUNG, a witness called by the Government, testified as follows:

I reside at 8514 South Elizabeth Avenue, Chicago. I am a yardman in the hog alley of the National Livestock Commission Company, Union Stock Yards, Chicago.

I have been employed by the National Livestock Commission Co. around twenty or twenty-five years, and during that time have been a yardman. I have not been employed as a yardman by any other firm in these yards. My experience before coming here was tin smith helper and I also worked for the Postoffice as special delivery clerk. I started out with the National Live Stock Commission Company yarding stock, helping in the alleys, and so on. It depends [fol. 784] on how much business there was in the hog alley. On slack days, we always help a little in the cattle alley and sheep house—that is, when it is light in my end and they are busy down there. I run the alley—that is, I yard and run the alley, take care of watering the stock and help sort with the salesmen and weigh it, keep track of the different owners, and feed and water. Our firm has pens in the Rock Island Division and the Northwestern Division. I am the only hog yardman in the Rock Island Division for our firm. They have two yardmen in the other divisions. They have more yardmen in the other division because they get more trucks over there. We have rail receipts in our division as well as trucks; it depends on where they unload.

I usually get down in the morning around, maybe, a quarter to six—five forty-five to six o'clock. Then I go down to the chutes and the stuff that is consigned to the National Live Stock, or hogs, my part of the alley, I take them up and yard them, water them, feed them, and then I go back and get some more and go down and bring them up, and do the same thing; and around nine o'clock or so, we have got the hogs all sorted, watered and fed and go down and get my stuff, if I have any stuff that is sold, and weigh what we have sold, come back around the alley and if the hogs need any more corn or feed, I also feed them again; also change the water; and if the hogs are warm, in this kind of weather, wet them down and keep them in good condition.

[fol. 785] The Stockyards Company feeds the hogs. I put the order in to see they are fed—to see they get the number of bushels of corn that I put the feed card in for. The Stockyards Company announces the arrival of hogs from the

Bulletin Office. Sometimes we get a letter or a tally sheet advising us of the prospective arrival of shipments the following day. If the hogs are in and the Yard Company calls them to us, we go and get them and drive them to the pens—unless they are yarded during the night, and then, of course, they yard them and we get them in the morning. If I receive notice that we have several carloads of hogs each belonging to a different owner, arriving on the same train, unloaded at the same docks, I would take each carload separately, and sometimes if the other men are not busy down there, they would give me a hand, and I also give them a hand when they are busy. I mean by the other men, the other yardmen. As to handling plural ownership hogs arriving by train, and as to any difference in handling them and single ownership, sometimes we get word on it to weigh them separately—different owners, for instance four or five different owners of hogs in there. They would give you the number of head and probably no weight, and you would have to grade the hogs for ownership and also weigh them for owners. In the case of plural ownership, we sort them up into individual owners, feed them separately, and also water them that way. Cooperative loads, of course, they are sold sometimes together, and then weighed separately—that is on the owner's request. Stockyards Company men notify us of the arrival of truck hogs by putting a slip in a [fol. 786] box for that purpose. The truckmen do the unloading. They put them in the pens and notify us. The pens are near the unloading docks. In the case of truck consignments of hogs, if the truckman has different owners' hogs separated, and unloads them separately, we keep them separately, but if they are unloaded altogether, we take them up to the alley and re-sort them. By "up to the alley", I mean where our sales pens are located. Sometimes hogs are sorted before they are fed and watered, and sometimes afterwards. Hogs arrive by rail at all times of the day. Weather conditions have a lot to do with time of arrival by rail. Say Monday, I should imagine most of them arrive between two o'clock in the morning until nine, ten or eleven o'clock. Truck arrivals come in at all hours. The salesmen sort them, and I help the salesmen sort in the morning—these sows and stags and bust pigs and so on—and undesirable hogs. I am familiar with the different classes and grades of hogs. I usually wait until the salesmen come out

before sorting. There is some sorting done after the buyer makes the purchase. Sometimes the hogs that are in the pens are not fat enough or too big, or not just right in quality. I do not assist salesmen for my firms in selling the hogs. I do not show hogs to buyers. The salesmen usually tells me when he has consummated a sale. I look after the weighing or the hogs. As soon as the salesman notified me that he has sold a pen of hogs, I do not immediately take those hogs out and drive them to the scales. I go up to the s-ale and find out if I can get those hogs weighed, and sometimes maybe I have to wait an hour or two to get them [fol. 787] weighed. I get the information as to when they can be weighed from the man at the scales, giving the firms the different turns. They give each man a turn—the first man that comes up there usually gets the first turn. They usually weigh eight drafts, which used to consist of a turn on the big scale. What they call the dinky scale is a small scale and they usually let you weigh a half an hour or so. Sometimes I drive the hogs to the scales myself and sometimes I don't. When I call the turn, he just tells me then to let them come, and I get behind them and chase them out of the pens and let them on the scale. If we are real busy, I have another man to help me. The salesmen assist once in a while. Personally, I do not have to do any sorting before I put them on the scales. The buyer usually does that. Yes, on the dinky stuff, I usually do that too for the different owners—you know what I mean. In working at the dinky scales, we take the hogs that are sorted out from the big load—the off stuff—take it down to the scale, and maybe one packer is sold to one man, and another ten pigs sold to another, and another stag sold to another man—we take them down there and weigh them to each man who gets the hogs, and also if there are two hogs of different marks, they have to be weighed separately. We weigh them separately and mark them on the tickets.

Sometimes we have a dozen, of course, and they are all in different loads. They may have several lots like that [fol. 788] on different loads—different owners. You sort off these hogs from the main load—that is, the big load—maybe 8 or 10—and they would probably be sold, maybe, to four or five different buyers; and then we take them down there and weigh them to the different buyers—whether this man get- a stag, this one gets a sow, or this one a thin pig—

and weigh them also for marks. If there is apt to be three different pigs in there with different marks, we weigh them separately for the marks and put them on the check and he gets them and maybe the next bunch another shipment the same way. I get the information in regard to that from the salesman. I make a memorandum. I drive them or put them on the scales. After the hogs are weighed, I go back to the alley and see if there are any more sold, and see if the water is on the hogs. After the hogs are weighed, the Stockyards Company takes care of them. I pick up the scale tickets as soon as the hogs are weighed. I mark the different owners—the different marks on the hogs. I then give the scale ticket to the salesman. Our firm has not received a good many double decks of hogs lately. I have handled them and do handle some. Sometimes the work is different in handling a double deck than a single deck. Sometimes they are graded that way—one end might be all of what we call packers or sows and another end will be all good butcher hogs. In a case of that kind, we drive the deck separately to the pens, if they are graded that way. If the owner is there and says it is all right to throw them together, we take his advice.

[fol. 789] I manage to drive a carload of hogs alone. We have to take a lead on the hogs and see that the gates are all fixed—take a lead of about a block or two, or a half a block—and cut down the hogs, and then have to hook the gate behind the hogs, and take another lead, and so on until we get them to the alley.

It is hard to tell how long it takes to drive a car of hogs on a real busy day. Sometimes I have yarded a load of hogs in five or ten minutes, and sometimes it takes an hour and a half to yard them. The difference is caused by unloading conditions and other conditions. Other livestock may be in the way, trying to get up to the alleys. There are several ways I can get to our pens. I determine the way by the conditions at the Yards. It is difficult to tell which may be the better. You have to use your own judgment. It is different—different ways. Sometimes some stuff is loaded on and then there is also direct hogs and other conditions that tie you up. We use our own judgment as to the best way to save time.

We weigh our cripples to Brennan and Allen and they take care of them. Lots of times we yard them out of the

chutes into a catch pen, and then, of course, we put in an order to have them taken away—that is, a cripple order. Then a cart comes around and takes them away.

[fol. 790] If a hog is unloaded crippled from a car, and the hog can walk, we use our judgment. If he can walk and we can get him up the alley to help the shipper out to get more money, we do that for them; but if the hog is not able to walk, we have to just send it out. If a hog becomes crippled while we are driving it up the alley, and is unable to travel under its own power, we have to send him out also. We put him in a pen. There are always pens along the way that we just drop them off in and put them in there. We have to get a key man to drop that lock on that pen and then he locks it up until we put in that order. The Stockyards Company maintains a special scale for weighing cripples. I do not have anything to do with the weighing of cripples myself.

On hot days, the hogs come in pretty warm, and you have to wet them down a little bit and cool them off—give them plenty of water, see that the water is always running in the trough; and sometimes we wet the whole pen down with the hogs to keep them from getting overheated.

As to how late we have to stay to get hogs weighed, it depends on how many firms are ahead of you—also market conditions—how they sell them. Sometimes it takes them all day to sell the hogs; and sometimes they do not sell them that day. When they are late in selling them, that means that I will be late in getting them weighed.

[fol. 791] We get a turn at the scales where we weigh, sometimes, two or three times a day. In our alley we have access to only the big scale and what they call the dinky scale. There are several other firms that weigh there. I couldn't tell exactly how many. I imagine eight or nine firms; I recall the Producers, the Farmers' Union, Kuenster, Holloway & Ogren, Sarsfield, C. Pritchard and Dunning.

I work in the office putting up circulars and stamping them, and also helping with the daily sheets—that is, the salesmen; helping with the daily sheets to see that the owners get their right hogs, according to marks, and so on. I do not assist in making out the account sales. It is part of my regular duty to help in the office the way I have explained. I aim to do that every day.

As to the difference between yarding rail and truck hogs, that just depends on where they are located. The truck hogs are not all unloaded at one place. There are different unloading docks. Sometimes it may take you five or ten minutes—sometimes it may take forty-five or fifty minutes. That is due to congestion mostly. In either case, we have to drive the hogs up the ramps to the second floor. The method for handling crippled hogs arriving by truck is the same as crippled hogs arriving by rail. If the shipper sends hogs in more than one truck, we do not drive them all at once. Sometimes the other truck don't get in for two or three hours after. If the shipper tells us we may yard them together, and they have been unloaded at about the same time, we being them to the alley together. The way [fol. 792] we handle them may depend upon the instructions we get from the shipper.

Our firm employs three yardmen in the hog alley who are regular employees. We usually yard all the hogs consigned to our firm. Sometimes the cattle men are not doing much and if they are not busy they will help us. If the reverse is true, we will help them. We never did hire special drivers.

WILLIAM F. O'MEARA, a witness called by the Government, testified as follows:

Direct examination:

I live at 7821 South Winchester Avenue, in Chicago. I am a calf salesman for Lawler Bros. & Co., at the Union Stock Yards and have been for three and one-half years. I am the only calf salesman. I am considered the calf salesman for the firm, but the boss also assists me once in a while. That was the situation in 1931, 1932 and this part of 1933.

I started in as a stenographer for W. W. Wilson & Co., a market agency at the Chicago Stock Yards, some fifteen or sixteen years ago. I was there for possibly a year, and then went to work for Conklin Bros. I did some inside and some outside and some office work. By outside work I mean as a yardman. I was with Conklin Bros. for a year or a year and a-half. Then I went to work for Pritchard—worked for [fol. 793] them something less than a year as an outside

and inside man; left the yards for a few months and came back and worked for Lawler Bros. That was possibly thirteen years ago and have been with them ever since. I went to work as an office clerk in the Fall of the year and the next Summer I went outside as a yardman in the hog alley. I suppose I was in the hog alley as a yardman for some five years. Then started to sell hogs—acted as a hog salesman for two or three years; and then they transferred me to the calf alley. I have remained there ever since. I was taken to the calf alley to be broken in as a calf salesman. I am still breaking in as a calf salesman. Any information I still want I get from the boss. He will assist me as to the value of the calves at different times if I am undecided. I refer to E. J. Lawler as the boss. Our calves come mostly by rail,—from the States of Wisconsin, Illinois, Iowa and Indiana. They may come in either single or double deck cars. The number of calves arriving in single deck cars vary according to the weight. The heaviest weight that we class as a calf is 300 pounds. We get very few weighing 300 pounds. Most of our calves run to the light veal class. There are possibly 70 or 80 300-pound calves to a single deck.

Light veal calves will average somewhere in the neighborhood of 120 head to a single deck, and double that number for a double deck. We have no range calves from the Far West. Practically all our receipts are from nearby terri- [fol. 794] tory, and will be classed as veal calves. There are bobs. Then the others are classified according to weights. They have no names as to classification except lights, good and choice. Light calves weigh around 100 pounds; good calves from 100 to 200 pounds; choice possibly from 140 to 200 pounds, or a little bit over. A choice calf would hardly weigh as much as 300 pounds. A calf that weighs over 200 pounds at this particular time of the year would not be called a choice calf so far as price is concerned. We would call it a heavy calf—a strong weight. We call shippers good weight vealers that are able to stand the trip East. They would weigh anywhere from 150 to 250 pounds. Bobs weigh from 50 to 90 pounds. It is very hard to sell bobs alone and especially if they are out of a load of calves—if the same buyer does not buy them. If they come alone, you will have to get somebody to buy them, but if they are taken out of a load, the party that usually buys the load usually buys the

outs and the bobs. If they come alone, we have to get a buyer the same way as we would for any class of calves. We might get an ordinary packer—small packer—or big packer—or some butcher to buy them; by butcher I mean a small city butcher.

Order buyers generally buy the shippers. The little packers generally go more for the good and choice calves, but the big packers also like to have their share of good and choice if they are buying the light weight calves from them. Generally our buyers are the packers—order buyers [fol. 795] or city butchers. I do not know of a calf speculator in the yards.

There has been no change since I went with Lawler Bros., with which I am familiar, with reference to the territory from which I receive calves.

I get to the Stockyards around six o'clock in the morning. Upon my arrival, I change my clothes, go out to the alley, turn on the water in the calf pens. As stock comes off the dock, it is sorted—the calves are sorted off the cattle and put in the calf pens—and I help sort and water it until such time as I either have to look for buyers or buyers are around. If there are a lot of calves on the dock, I go up there and drive them down. We have certain pens that are assigned to us; and certain pens that are assigned, are set aside for the purpose of handling calves only. These pens are about three-quarters of a mile from the unloading docks. The calves are driven to our pens by our yard boys. Occasionally I drive them off the docks only. I don't do all the sorting of the calves. A yardman by the name of Joe Nolan assists as a yardman. We seldom select calves to begin with. We do not sort cooperative loads of calves unless we have instructions so to do. From now on, until some time around next February, we will get very few loads of calves, but starting sometime in February until about this time, we get numerous loads—a number of straight loads of calves. From this time until February they would come mixed with cattle. Once in a while we get straight loads of calves. The number of calves [fol. 796] arriving in a carload with cattle would be one head up to a straight carload itself.

If twenty calves arrive in one car mixed with cattle, we would put the twenty calves in one pen, whether owned by one person or several different owners. If we have home

weights, they would be weighed together, if sold in one lot. If we didn't have home weights, but just had marks, we would have to weigh each mark separately. Our calf pens are Division D, Blocks 15 and 16. Often calves come mixed with steers. Calves generally come mixed with what is classed as butcher stuff.

You can, at times, get more than one packer buyer to look at your calves from the same packing house, but, as a general rule, there is one buyer usually takes in a division. Generally you will find two buyers from the same packer in the same division buying calves.

No doubt, if there had been more calves at the Chicago Yards, they could have been handled,—that is, sold.

When I go out in the yards in the morning prepared to sell calves, I have in mind a price I will ask for the various grades. I arrive at that price in my own mind from supply and demand—higher or lower. If the supply is very light around the yards, and I think the demand will be good, naturally I would ask higher prices. Before I go out to sell in the morning, I get the information in respect to [fol: 797] receipts of the entire Yards. As to the demand, just the knowledge that you have of the packers being in the market and buyers asking you for calves, is helpful. We submit a price to the buyer that is based upon the information that I have already procured. A few of our consignments come by trucks. I don't know why there should be any difference in selling calves that arrive by rail than selling those that arrive by truck. My answer is there is no difference. When calves arrive by truck, they are some times delivered to our pens by the trucker. The tail gate of the truck is dropped and the calves run off. The market on calves was lower for 1933 than in 1932. I have not held over any calves unless they came in real late in the day. It would take longer to sell calves this year than in 1932. On lower markets, sometimes it takes longer to sell stock than on a high market. That would be the only difference between the two years—that it would take a longer time each day.

I do not know the greatest number of calves that I have sold any one day for 1933,—not exactly. Approximating it, I would say going up toward 1500—close to 1500. It would be between February and June—perhaps between the latter part of March or the first part of May. I expect E. J.

Lawler sold some of them. I would say he did sell some of them rather than say he did not sell them. He is always there. I say that I do not know, but am inclined to think he did sell some of the calves on the day the 1500 were sold.

[fol. 798] "Mr. Miles: But did he come in and sell because of the larger number that you had?

Objection by Mr. O'Bryan.

The Examiner: Mr. O'Meara, we don't want you to testify to anything that you don't know or express any opinion on any matter unless you have some definite opinion. All I am interested in is getting the facts. Can you recall the circumstances enough to answer the question intelligently, or can you not?

The Witness: No."

The objections of counsel do not bother me.

There is hardly any day that E. J. Lawler does not do some actual selling, excepting Friday. I would say that he sells a small part of the calf receipts.

In my opinion I could have sold more calves in the year 1932 if I had had them to sell.

"Q. In your opinion, how many calves could you have sold in the year 1932, assuming that you had them to sell, taking conditions just as you found them and taking the calves just as they came to you.

Mr. Boyd: May I ask a question as the basis for an objection?

Mr. Miles: Most certainly.

Mr. Boyd: Do you know how many calves you sold in 1932?

The Witness: No, sir.

Mr. Boyd: Do you know how many calves you sold on one hundred market days in 1932?

The Witness: No, sir.

[fol. 799] Mr. Boyd: Do you know how many calves you sold on any market day of 1932?

The Witness: Not the exact number, no.

Mr. Boyd: Than I object to the question for the reason that the witness is not qualified to answer it and the statement that he does not know how many he sold on any par-

ticular day would disqualify him as to how many he could sell on any of those days.

The Examiner: Objection overruled. Read the question.

(Whereupon the question was read.)

The Witness: I don't know.

Mr. Miles (continuing): Do you believe that you could have sold 25% more than you actually did sell.

Mr. Boyd: The same objection. The witness has answered.

Mr. O'Bryan: Further objection. The witness has given the complete answer and Government counsel is now trying to argue with the witness.

Mr. Miles: No argument. Take the ruling.

The Examiner: Objection overruled.

The Witness: What was the question? Could I sell 25% more?

The Examiner: Yes, sir.

The Witness: No.

Mr. Miles: What percent more do you believe you could have sold, if you had them to sell?

Mr. Boyd: Now, I object to it for the reason that the witness said he could not tell how many he could sell, and he could not figure a percentage on an unknown number.

Mr. O'Bryan: Same objection to all this line of questioning. It is improper.

[fol. 800] The Examiner: What have you to say on that, Mr. Miles?

Mr. Miles: Mr. Examiner, I am not going to engage in colloquies and arguments.

Mr. Boyd: I object to the statement.

Mr. Miles: Apparently Mr. Boyd contends that because the witness cannot deal in specific numbers that he could not even approximate in percentage. I am not going to fill this record with argument in regard to matters that are so clear cut, so perfectly proper, that an objection to them can only serve but one purpose.

Mr. Boyd: I don't feel that the attorneys for the Respondents were any more voluminous per question asked by Government counsel, and I think that the effect of the statement of the Government counsel would indicate that I am charged with the responsibility of filling the record

with more objections or more lengthy statements than he is, and I must protest against such.

Mr. Miles: I am making no such charge, sir, I am merely pointing out to you that I am making a resolution.

Mr. Boyd: Which you will probably violate when I ask a question you don't like.

Mr. Miles: Take the ruling.

The Examiner: Objection overruled. Read the question.

(Whereupon the question was read.)

The Witness: I really don't know.

[fol. 801] I do soliciting in the country. Last year I believe I had 62 days in the country. Generally, I go out Thursday and remain until Monday night. I believe they—"The Exchange"—include Saturdays and Sundays.

I do not sell any class of livestock except calves, except if the bull man is on his vacation—or the bull man is off a day.

When on soliciting trips, I solicit business from farmer shippers. If I go out to the country and hear of a man that has stock ready to ship, I go to see him if he is close by. I do not receive requests to go out to certain farmers—not many. I don't know as to what our company has in the way of such request. How I determine the route I would take, or the destination, or where I would go, is wherever I am sent. Someone in the organization tells me what certain territory to go to.

I make appraisals; if a shipper had a number of calves they are usually shipped the day they are taken in. There are not any shippers that have loads of calves. Cooperatives ship entire loads of calves. The party might have his calves in the yards that day ready to ship, and he might ask you what you think the calves would bring. That would be on the following day.

[fol. 802] Sometimes I know that the same people have been solicited by other concerns, and in some cases I do not know. If I do know they have been solicited by other concerns, I will solicit their business just the same. I solicit all the classes of livestock that the firm handles. If asked, I will give a man an opinion as to what I think his cattle would be worth on the Chicago Yards—same as the calves. I could not give him a very good opinion about hogs, but

I would attempt to advise him to the best of my ability with reference to any kind of livestock, and try to induce him to ship to our own particular concern at the Stockyards.

My soliciting trips are made by automobile. I use my own machine.

F. O'MEARA was recalled for continuation of direct examination:

When I was on the stand yesterday, I mentioned that Mr. E. J. Lawler, who is really the owner of the company, assists me in selling calves. He is actually a steer salesman. His duties are both steers and calves. He is an old-time calf salesman, originally, and, as I understand it, after going into business himself, he never did get away from the calves while he did work in the steers. There are three steer salesmen with Mr. Lawler—counting Mr. Lawler.

[fol. 803] There are four men working in the steer alley that have memberships—one more or less runs the alley, and, on an odd occasion, might sell a few steers. I cannot say that Mr. Lawler sells very few calves; some days he will sell more than others; and some days he doesn't sell any at all. I believe it is true that I will sell more calves than he on any day that we are both on the yards.

The reason I say I solicited 62 days is that we have to register out when we go soliciting, and register when we come back in, and I believe that they count—that the days you are actually out, whether they are Sundays or Mondays, go in on your time. I am positive of that.

Packer buyers will buy the bulk of our calves. Armour, Seift and Wilson are the major buyers that buy the majority of our calves. I sell the most of our calves to Armour & Co. The Armour buyer is on the yards nearly every day—possibly every day—looking around for calves. Assuming there was a carload of what might be called butcher stuff coming to the Yards, and there were two calves in that car, the calves would not be yarded with the butcher cattle. They would separate the calves from the cattle and put them in pens by themselves. If I were crowded for room, I might not give two calves a whole pen. I might mark them and throw them in with something else; but regardless of the number, I would take them away from the butcher

[fol. 804] stuff. If we had ten pens of calves, in showing them to a buyer some times they bid on the first pen—on the pens as they go along—and other times they might wait and ask what else you have got and then go back over them and bid on each pen separately. There is really no rule about it. Most of the calves received by our firm come from Wisconsin. Our firm receives more calves on Tuesday, I believe, than any other day of the week. Monday's run mostly to Iowa calves—not very heavy. Wednesday is medium and Thursday is the second largest day of the week we have on calves. On Thursdays they come mostly from Wisconsin. Some calves sell just as early in the day as other livestock and some of them just as late. The little butchers will buy their calves early and the big packers do not seem to come out until later in the day to buy them, and what is left they buy, of course.

As to whether it is as easy to sell calves as it is cattle, taking them as they run, or more difficult—the only answer I can give to that is the market will vary more in selling calves than cattle, in my opinion. The price will vary more. I never sold very many cattle, so I really could not pass an opinion as to whether the price will have an influence upon making it more difficult or less difficult to sell cattle than calves. I just couldn't express any view on that matter. [fol. 805] In the season when we have the hesviest run, we will actually finish calves as late as three o'clock. I don't ever remember getting through selling before twelve. I am only considering the selling and showing, not counting any office work or making up of any records. On Friday, sales will be completed earlier than the first four days of the week. We had sixteen calves to sell this morning and they are being looked after by Mr. Lawler. I was up there at the sales pens until quarter after nine and I had not sold them.

Gross-examination:

We don't sell more calves on Friday than Tuesday, because we don't get them to sell. We don't get them to sell because they don't come to the Yards. I don't know how we can change the receipts so we will be busier in the light seasons. We have periods during the year when calf receipts are lighter than at other times, because a cow can

only have one calf in a certain length of time, and they seem to be all bred for a certain time of the year—most of them. Therefore, we have slack periods due to the natural conditions that cannot be overcome.

I would not think there would be any way that I could be laid off on the light days and do my work on the heavy days. I don't know whether Mr. Lawler would have the time to handle them on days like today or not. In my judgment, it is necessary to keep salesmen that are able to do [fol. 806] the work throughout the year. Calves are different from cattle in that they are perishable and have to be sold—veal calves. If you were caught holding calves over for any length of time, the humane society would probably be after you. The perishable nature of calves causes larger fluctuations; for that reason we are almost forced to make a clearance of veal calves. The day they arrive we usually always sell them; and we are less able to resist a decline in the case of calves than we are in the case of cattle. I understand that there is a difference on the rate in trucked-in calves and calves arriving by carload. As to whether I meant by my answer on direct examination to say that the services rendered in the case of selling rail calves were worth the same as truck calves, I had just one day this week and had seven calves come in on a truck that belonged to seven different owners. I had to sell each calf separately—weigh each calf separately. I can sell a truck calf if I don't know whether he came in on a truck or by rail—I can sell it just the same. It does not make any difference about the selling of it. There is sometimes more bother in getting them.

I will say it is more difficult to handle truck calves but I don't see where it is any more difficult to sell them. I am discussing it from a standpoint of price resistance rather than the parcels in which I sell them.

[fol. 807] It would not be as difficult to sell ten rail calves as it would ten calves off the truck. There is a difference in selling truck receipts than rail receipts because truck receipts arrive in smaller parcels. It is more difficult to handle calves that arrive by truck. Calves are the hardest livestock to drive that I know of. They are the youngest to begin with, and very tender. They are always complaining about bruises. We have to handle them with more care than you do cattle. Buyers complain about bruises. Bruises

damage the carcasses. We very seldom handle calves that weigh over 300 pounds in my alley. The stocker calves are sold in the steer alley. Lately a good many calves are not sold on the Chicago market for Eastern shipment.

I have had occasion to examine the records with regard to the 1500 calves that I testified about being sold yesterday. I ascertained there were 1370, on April 4th of this year. I do not remember the state of the market. I do not know the number I sold and the number Mr. Lawler sold. Mr. Lawler generally supervises my work in connection with the handling of calves. He is the proprietor of the firm. I do not remember how I brought about a clearance, or how I sold them on April 4th. That is our largest run this year. It is not usual that we would have one-third of the total car receipts as was the case on April 4th. The day was unusual in that the bunches were all large. The number of owners were fewer than we would ordinarily experience in a run [fol. 808] of that size. And it took a few- number of trades than we would ordinarily have experienced if the bunches were smaller. Most all of our calves do come by rail. I recall especially that the calves in question came by rail. I remember that one of the cars was a double deck. I don't know whether there was more than one or not. It might be the largest run of the year and it might not; but it is a very good run (4,081 calves on April 4th for the entire market).

When we receive calves with a carload of cattle, we sort them off and take them to the calf alley, and from the standpoint of a mixture, it is as much of a mixture and represents the same kind of difficulty that you would experience if there would be a hog in the car. Where cattle and calves arrive by carload, under the present rate, we charge a higher rate than if the car contains cattle only. It is very justifiable from my knowledge and experience. I do not think it just or right that a carload of cattle and calves should be treated as a single species from the standpoint of the handling and selling efforts necessary. I believe that they should be treated as a mixture.

Redirect examination:

I very seldom sell any calves that weigh much over 300 pounds. Once in a while you get them up to 350 or something like that, but very seldom around 400 that I sell.

[fol. 809] Assuming that a carload came to our firm—say that there were several fat steers in them—and in the same carload there would be several of the butcher class of cattle, and then several calves. The steers would be separated from the butcher stuff, and put into separate pens—the butcher stuff into butcher pens and the calves in the calf pen. One of the first questions I answered for Mr. Boyd was in substance why I did not sell as many on one day as I did on another, and I answered because I did not have the receipts to sell. As to whether there would be no difference in selling calves on Friday—just as many Friday as I could on Monday, Tuesday or Wednesday—I would not like to have to sell a great number of calves on Friday because it is not usual that the orders are around on Friday for calves. Maybe it is due to the fact that it is known that the receipts are light on Friday—not entirely. Kosher calves would have to be killed, as I understand, before Friday afternoon or Saturday, for use to get them on the market that week.

If ten calves arrived by truck and belonged to ten different owners, I don't think they would be sold in one sale as frequently as would ten calves arriving by car belonging to ten different owners. Truck calves seem to run different grades; they don't seem to get them as much alike in trucks. If they arrive by car, belonging to ten different owners, I quite often find them in the same general class so they could be sold in one sale, and I think that would happen more frequently than in trucks—even though they [fol. 810] are different owners each time. As to why it would be more difficult to handle truck arrivals than car arrivals, omitting the selling, truck arrivals come in such small lots that it is just as easy to go over and get a big bunch of calves as five or six; it takes practically as much time; and the car arrivals are in fairly good time in the morning, while the trucks straggle in all day; so you get a telephone at the scale or the alley that there is a calf or ten calves just come in by truck over at the chutes and you have to send a man over after them, which does not happen very often by rail.

Out on soliciting trips, I pass out novelties—such as, small memorandum books, pencils and such things as that. As to any entertaining of our prospective customers or shippers when on a soliciting trip, we might buy them a

meal or take them to a show. I solicit from anybody—carlot shipments, or truckers or those farmers who would ship by truck. I go on soliciting trips by automobile and had to come back once by train. The farthest point which I go is probably 350 miles from Chicago. That would be in Wisconsin. I have not done much soliciting lately in Iowa. I make trips through the Northern part of Illinois and we call on anybody we think we can get any business out of, whether they are new or old. On those trips I meet representatives of other concerns who are soliciting. Every firm on the yard handles calves that I know of. There are some firms that get the most of the business—there would be more than three or four firms.

[fol. 811] Recross-examination:

On soliciting trips I have had our patrons invite us to stay all night with them, and I have had them invite me to meals which they pay for or provide—which reduces the cost of my travel sometimes. My soliciting so far as calves are concerned, is principally in the dairy sections surrounding this market.

Redirect examination:

The calf alleys or pens are located near the steer alleys. They are right next to the steer alley—right behind them. And the alley for butcher stuff is located a little farther away than the steer alley.

Mr. David Leland Swanson, a witness called by the Government, testified as follows:

Direct examination:

I live at 7834 Oglesby Avenue, in Chicago. Am manager of Chicago Producers Commission Association and have been manager of that Association for a little over seven years. We do business in the Chicago Union Stock Yards. The Chicago Producers is a corporation and it is called—and is a cooperative. It was organized under the Act of 1872, in Illinois, and later reincorporated under the Act of 1923.

[fol. 812] Our total employees at Chicago are about 65. It varies a little on account of extra help and so forth. The general nature of their employment is—salesmen, assistant salesmen, executives, yardmen, office workers. As to "executives", we have some combination men who are both the head of the department and the head salesman; for instance, there is the manager of the cattle department and there is another man who is head salesman. In the sheep department the manager and the head salesman is the same man. There is the office manager also, and the man who is manager of the cattle department is also the manager of the contact department.

The contact department has general charge of the advertising publicity, cattle, sheep and hog field service; general field service; complaints—these are their main duties. In the case of an actual salesman who would also be classed as an office man or head of one of our departments, Ernest A. Bielfus is the head of the sheep department, in addition to his duties as salesman. He, along with the manager, decides on the personnel of the sheep department and how much help and how much to be paid; also any other policies of a managerial nature that can be more easily done by him than by the manager.

The policies of the Chicago Producers are determined by the Board of eleven directors—these eleven directors coming, five from Illinois, five from Iowa, and one from Wis-
[fol. 813] consin. These directors were elected from districts in the annual meeting—four or three each year for a term of three years—and these districts are apportioned according to the amount of livestock raised and fed, and corrected for the amount coming to the Chicago market. The policies of the Board are carried out by the management. The manager either does it himself or usually delegates the responsibility on to enough authority to get the work done. The manager of a co-operative is placed in the center of a sort of a circle. On one side you have the Board of Directors immediately over the manager; then, a little farther out, you have got the membership determining who the Board of Directors shall be, and lots of times the members write directly into the office and a good many details are taken up and handled with only a general knowledge of it in possession of the Board; but whenever any new policies or any new matters come up, they

are referred to the Board. Then, on the other side of the circle you have the employees to be handled and taken care of; that is, you have got a pretty direct reaction if the country does not like the way things are handled; and all the complaints are regarded as the heart of the business—and as these complaints, all the correspondence is summed up and presented at each of the regular meetings of the Board of Directors, which usually takes place monthly.

As an illustration of under what circumstances the Board would take action instead of the manager of the Association, if the Directors thought the manager was getting too much salary, or was not doing his work, they would take that directly. If our association were to embark on a new [fol. 814] policy of any kind, it would not knowingly be done by me, alone. There might be some details that would be handled a little differently on the spur of the moment, because they required immediate attention, but that would be brought to the attention of the Board at the next meeting as to how it was handled, so that if they did not want that method continued, it could be changed.

When any new work is contemplated, it is brought up before the Board of Directors and the manager is supposed to give the Board the benefit of all the information that he and those directly interested in the organization can get concerning it, to the Board, both pro and con—whether to do it or whether not to do it. Sometimes it goes a step further and the Board will ask the management for the recommendation as to whether to undertake it or not. Other times they will just decide if they have had the facts laid before them. Some other times they will want to make a little further investigation on their own account before undertaking it. Quite frequently such methods will be referred to the Board of Directors of the National Livestock Marketing Association for their reaction as to whether they think it would be in line with the policies of the National Marketing organization,—for instance, the installation of the cattle field service on an extensive scale was undertaken in the Fall of 1927 or the winter of 1928, or somewhere in there—I am not sure. The reason for that was the requests we received for field service, or perhaps more [fol. 815] properly called market service in the country, consisting of appraising or estimating the value of cattle,

suggestions regarding feeding methods and advice as to when to market, and going so far as quite frequently the shippers requesting us to let them know when to market. In the discussion before the Board of this matter, it was brought out that although it cost money to render this market service in the country, still it was in line with the policy of the National Livestock Marketing Association, which was to bring about more orderly marketing. For instance, a cattle shipper likes to get in here on an active market—a higher market—and does not like to get in on a lower market. We had a very good illustration last week. We advised numerous people on Monday and Tuesday to hold back and not come in with their cattle that we had on our lists over there—people who called up and wrote in—and then on Wednesday we advised them to come for the Thursday market. The market was low and draggy Monday and Tuesday. Wednesday it pepped up and was quite active, and Thursday it was almost as good as Wednesday; and I think that as a result of that we contributed—we did not do it all, by any manner or means, but we contributed—toward a more steady market last week, and I think a little higher average price for all cattle than if there had been even more than there were the first of the week, and less the last of the week, because there would have been more taken off the first of the week than would have been apt to have been put back on the last of the week with the lighter receipts.

[fol. 816] Cattle salesmen mostly render our cattle field service. Occasionally an assistant salesman will go out to learn—that is, for experience more than anything. Sometimes we send a cattle salesman to a particular farmer upon request, but it is not the rule. Take in Illinois—I am using Illinois because last year 70% of our business came from Illinois—if a man writes in as an individual from a certain county, we get in touch with the chairman of the livestock marketing committee in that county and try, through him, to arrange so that our salesman will be down there at least one day—that is, have enough work for at least one day, and quite often two days, in the county. Sometimes it will be in one county—one part of one county one day and over in another part of the county the next day, with another marketing committee. Most of their trips are made on weekends, Fridays and Saturdays.

We do very little of what is ordinarily called solicitation. I take it for granted that if a man asks us and knows we are coming, that he knows we would like to handle the livestock through the Chicago Producers. If he don't know that, there is not any use in spending perhaps too much time on that man just trying to get him to ship, because you have to solicit that man over the next time and over the next time, and so forth. As to whether or not we have a request to send one of our salesmen to a man who does not belong to the Association, and whether we would send that salesman to him to appraise his cattle, would depend largely on whether we had requests from members near to him that wanted to have their cattle looked [fol. 817] at.

If we are sending a man down to a group of our members, and in the same locality, so that little additional time would be taken, we would appraise for a non-member. If we had no member in the vicinity, we would very seldom give aid to a non-member in that vicinity. The Chicago Producers is a member of the National Livestock Marketing Association—pays dues—50¢ per car on every car handled.

The purpose of the National Live Stock Marketing Association is to help solve the problems of livestock marketing; and since a good many of them are national problems, we can do it more effectively and cheaper collectively than we can working as individual unit.

The National Live Stock Marketing Association is a corporation and its members are cooperative terminal selling agencies—State livestock marketing agencies and regional livestock marketing agencies, three types.

We own stock in certain subsidiaries of the National. We own stock in the National Livestock Credit Corporation of St. Louis. Its purpose is to discount loans for the Chicago Producers through the Intermediate Credit Bank of St. Louis. Then, we have both preferred and common stock in the National Livestock Marketing Association itself, and we have stock in the National Publishing Association. The National Publishing Association puts out a monthly paper—the National Live Stock Producer. It [fol. 818] contains general information on livestock—all problems of livestock production and marketing. Then, we still have a little stock in the National Order Buying

Company. We also have some stock in the Illinois Agricultural Cooperative Auditing Association, a little stock in that. I think that is all—outside of our own subsidiary. We have a subsidiary of our own in which we own some stock. That is all the affiliated ones I think of right now.

We pay the dues in the National, as I mentioned before, and we also pay for a number of subscriptions to the National Livestock Producer—papers that go to our members. We pay through the general field service arrangements between the Producers' agencies in getting business out of Illinois and we also pay through the same sort of a fund in Iowa and then we pay to the Western field service. I think our charter, by-laws, rules and regulations are on file with the Department of Agriculture.

We have e[illegible] as salesmen in the Cattle Department, Ray Walsh, h[illegible]d steer salesman; G. C. Story, steer salesman; R. J. Fulton, [illegible]alesman of odd steers and stocker and feeder buyers; W. H. Howe, butcher cattle salesman; H. B. Duke, seller of odd lots and small bunches of butcher cattle; Henry Johnson, calf salesman; and Howard Thompson, bull salesman. We have salesmen in the hog department—Ralph C. Schrabb, manager and salesman; Henry Campbell, salesman; Lyell Chandler, salesman; Everett James, salesman; and William P. King, salesman.

[fol. 819] In addition, in the hog department, we have four assistant salesmen who act as head yardmen, head alley men and also sell most of the odd head of packing sows and pigs and stags, and so forth.

In the cattle department, we have as assistant salesman, John Harris—in both cattle and sheep; and he has been selling calves recently, while the calf salesman was on a vacation. He continued to sell calves while the regular calf salesman sold odd lots of butcher cattle—while the odd-lot butcher cattle salesman was on vacation. He spends some time in selling sheep and some time in selling cattle, but not on the same day or same week.

In the sheep department, Ernie Beilfus is manager and head salesman; S. R. Anglin, assistant salesman. Both of them also buy some sheep. And our assistant salesman spends some time in yarding.

I would have to look up the records of the time study to tell what time Mr. Schrabb would spend in managerial duties and in salesman's duties. It is a part of each day.

As a boy, I worked on the farm and also in the retail

meat business of my father in Galesburg, Illinois; graduated from high school and college, and had a couple of years in law school. Then I was in the retail meat business from 1912 to 1916, and after coming back from service in the Marine Corps, I went back to the U. S. Department [fol. 820] of Agriculture in the Bureau of Markets, and came out here to Chicago and instituted the meat reporting service for them. Was on that about a year and then shifted over to the hog market reporting. I left in April, 1922, to become manager of the Producers Commission Association at Indianapolis, which was just being organized. I was there until coming here in April, 1926. And I have remained here from that time on.

In 1932 or 1933, we made changes in the personnel of the Chicago Producers—January 1, 1932, E. I. Stephens, at that time manager and head salesman of the cattle department, resigned. There have not been very many leaving during the depression. I don't think of any other changes except in the yard and office help—that is, minor changes—right now, without going over the records.

We have instituted a general reduction in salaries or other expenses for the Producers. The reduction in salaries was a horizontal reduction—the same percentage all the way through. It was 10% on January 1, 1932—I think it was. And none since that time. Yes, there have been changes in policy of the general reduction in other expenses. You might put it this way: We have shifted some of the work onto other aspects of the business a little harder, and less on others. To illustrate—closer checking up of the mailing list, in one case; and sending out more material under one cent postage rather than three. It resulted in getting more information out to more people and [fol. 821] less material falling on what you might call unproductive ground.

Our association does not set aside any percentage of its income, net or gross, to be expended in advertising, business-getting and business maintenance. As to what our association actually does in the way of advertising, and what has been called business-getting methods, a good many of the services are in reality services and the business-getting quality of the service is more or less incidental. Now, as to advertising, we start out with market reports—market letters. Market reports are put out every two weeks on Wednesday, by our association. We obtain the

information through our salesmen and buyers, the United States Bureau of Agricultural Economics, the Drovers Journal, and the Research Department of the National Livestock Marketing Association. We use the radio—that is done daily, Monday to Friday, around noon on WJJD and on Saturday noons on WLS. As to novelties, we get out books, pencils, mostly bullet pencils, marking shears, sheep markers and a few canes. The shears and sheep markers are given out so that it will save us complaints. They can mark their stuff effectively and with less liability of mixes when they bring them in.

We seldom advertise in the daily papers or weekly papers that are general newspapers in general circulation. Since I came with the Chicago Producers, our shipments from the Western States have increased some—shipments from Iowa decreased and from Illinois increased, in a [fol. 822] general way.

The points farthest west from which we receive shipments are Washington and Oregon; South from Texas; and also Montana. Twenty-five States in all last year.

As to what else we do in the way of advertising, it is pretty hard to draw the line in the livestock commission business between advertising and publicity. They join so closely together. As to publicity—you asked about market cards—now in regard to market letters, we put out a special letter to men who have steers on feed, a special butcher cattle letter, a special hog letter, special sheep and lamb letter, and then, during the buying season, a special letter on the purchasing of cattle and the purchasing of sheep and lambs. We get our information for these market letters from the same sources as mentioned under market cards.

We have a different mailing list. They are worked on constantly. Some of our customers just get one release and some get two and some get three, four, or five; and we put out on Saturdays to the members of the Livestock Marketing Committees, banks, county agents, teachers of vocational agriculture, and so forth, the Successful Co-operative on which is news of the organization on the front side, and on the back side is the market reports on cattle, hogs and lambs with near future prophecies.

[fol. 823] We advertise that we render sales and service equal on the average to any firm and better than most; and I believe that to be true.

We maintain a transportation and claim department and collect railroad claims without direct charge to the shipper, and carry the expense of that department in the general overhead. We also maintain the transportation part of that service by furnishing quotations on rate for movements, and also assist shipping managers to have their facilities improved at country points.

We sometimes send a man out to the country managers to advise with them, but usually it is more effective for the shipping association manager to write in because we have it in writing then, and our transportation department, in taking it up with the railroad company, can get more done that way than they can by just talking to the railroad people.

The loan service was put in in 1923—the Fall of 1923, I think—primarily to assist worthy livestock producers in getting credit when it was not available locally, and incidentally to help hold interest rates in ine out in the country. On that service, we just make the interest charge which goes to the National Live Stock Credit Corporation. The loan service should be classed just about like the cattle and sheep field service in that the shippers [fol. 824] request help in getting loans. The loan service is handled by the office manager, C. D. Beck. The transportation and claim department is handled by members of the transportation department of the Illinois Agricultural Association at a flat sum per month.

When requested, we attend meetings, cooperative meetings in the country—I mean cooperative association meetings. We also attend livestock feeders group meetings. I think most of the other services are performed here on the market, but they reflect back to the country.

The policy of the Chicago Producers is to maintain a force sufficient to care for peak runs. We believe that that makes it possible to sell livestock more efficiently day in and day out. It does cost a little more to do that, but when the runs are heaviest is usually when the market is draggy and when efficient selling counts for more. We also carry more than ample bonds in order to keep up the confidence of the country in the Chicago market. It was shown to be a good thing during the moratorium when we found out that we had been in the banking business, but did

not know how extensively. We had a large number of checks on March 3rd. We had a large number of checks outstanding not only through the month of February, but January as well, and we still had a large number outstanding in April, May and June.

[fol. 825] In working on grades, we have always cooperated with the United States Department of Agriculture and the packers in helping to develop definite systems for the grading of livestock. We believe in that, because the improvement in grading facilitates the marketing and tends to distribute according to value, increases the consumer demand and sends more money back to the country.

[fol. 826] We also cooperate with the Illinois Live Stock Marketing Association, and the Iowa Live Stock Marketing Corporation, by furnishing them constantly information on the exact status of this market on all classes and grades of livestock. Another phase, the Boys and Girls Club Work, the Chicago Producers have supported very actively for years, the 4-H Club movement awarding medals to champion members of the 4-H Calf and Pig and Lamb lub, in the Chicago territory for their champion members. We also entertain at a luncheon during International Week for champion members of the various Boys' Clubs that are in them. We also from the very beginning have supported and sponsored the auction sales of club calves that are held during the late summer and fall months, handling approximately three-fourths of all the calves marketed through these auctions. Market tours, handle them upon invitation or by request, taking each group through all the departments and various activities of the selling agency here, and also showing them the function of the other selling agencies, and the stockyards, and the packing houses, and the railroads. In general, have made it possible for the person participating in a tour to get a first hand and first sight information of live stock marketing, which reacts to the advantage of the individual participating, as well as the origination contributing that service.

We don't make an extra charge for account sales, that is, we make them on one big sheet, and there are duplicates, they are perforated, and then can be torn off and we don't make any extra charge for that. Yes, I have made a study [fol. 827] of our present schedule of rates and charges. I think the present commission rates schedule when it was

put in ten years ago, practically everything was coming by rail, and at that time it was really a weight rate basis, making allowances for number of head. That is one instance, the rate on a carload is based on single owner cattle, $17.00 to $21.00 if it were 24,000 pounds for heavy cattle, and if there are only 17 head, the rate would be $17.00, but if it was over 24,000 pounds of light cattle, and there happened to be 27 cattle, it would be $21.00, but the basis was largely a weight rate on cattle, and hogs as well. I think that with as big a percentage as we have coming now by truck, and in light weight cars, I think the commission rate basis should be on the basis of weight, so much per cwt. for cattle and hogs, with a minimum on a small number, odd lots, that is, for cattle and hogs, and left on a per head basis on calves and lambs. If you attempt to figure a commission rate on a per head basis on cattle, you can do it on cattle weighing from 800 to 1200 pounds, say, all right, because the average weight of cattle coming in here is around 950 pounds, but such a rate that would be fair from 800 to 1200 pounds cattle would be too low on 1200 to 1800 pound cattle in relation to the 800 to 1200 pound, and too high on cattle from 400 to 800 as compared to cattle 800 to 1200 pounds.

The circumstances that would make that differentiation, just by the complaints I have had on light weight cattle and light weight hogs, and pigs, a very evident injustice. [fol. 828] Now, on hogs, with the average weight of hogs around 245 pounds, you could make a rate per head on hogs, if they are all weighed, from 200 to 300 pounds that would be fairly satisfactory, using minimum numbers and maximum numbers; in the same way that rate would be too low on hogs weighing from 300 to 500 or 600 pounds, as compared to hogs weighing 200 to 300, and it would be too high on hogs weighing from 200 down to 100 and below, as compared to the 200 to 300. The reason that you can make a per head rate on calves and sheep is because with calves coming in here, most of them are veal calves and weigh largely from 100 to 225 pounds, averaging around 150 pounds. With your lambs, most of your lambs weigh from 60 to 110 pounds and average around 85 pounds, so that you can figure per head rates out pretty accurately on calves and lambs. Getting back to the fundamental question on what basis the rates should be made, we have cattle

and hogs hauled in here by truck and by rail, and very seldom is the rate on anything except a weight basis. Then, when we sell the cattle and hogs, we invariably sell them on a so much per cwt. basis. After the packer has slaughtered the animal, he sells the meat on a per cwt. basis. Like any rate structure, you might call attention to some of these inequalities but I am positive that you would not have half these inequalities that we do under the present system if cattle and hogs were put on a cwt. basis. And heavy weight cattle on per head basis looks a little low while the rate on light weight cattle and light weight hogs looks [fol. 829] a little high, sometimes more than a little high and sometimes more than a little low.

I think that there are as many cattle in number between 400 and 800 pounds as there are over 1200, but not as much in weight, of course; that is just an estimate. I have no figures in mind. The average weight of hogs is 245 pounds. I could not give you the percentage. You would have to count that because the average of all hogs were put together and in one average cost, and the average cost of cattle are according to the grade and weight of both.

In our own schedule we do have an extra service charge. The extra charges are in an exhibit in the record. As to whether I have made a study to determine whether the extra charges made for those extra services do or do not compensate us, the only way I can answer that is to say that we have stated that some of them do compensate us and others do not. Now, on the average, I would say that they do just about. As to whether the tariff covers the extra cost I would have to work that up with the auditors. I could not answer that at this time.

I would like to put this statement in: I think the U. S. Department of Agriculture, before making a ruling on the reasonableness of the rates at Chicago, should have a study made of the possibilities of putting a per cwt. rate on cattle and hogs with minimums on small lots. The two [fol. 830] big reasons being more fairness in the commission rate charges and also the simplicity of the rates, making it possible for the producers of live stock to easily familiarize themselves with them. I do not care to submit a proposed schedule at this time. Rates under the schedule I suggest would be the same for trucked-in live stock as stuff arriving by rail. It would be on the per owner basis.

I would make an allowance for unusual conditions with reference to drafts, that is, as the drafts increased, it would carry an added charge in the case of trucks, and that would be the purpose of having a minimum; but all other conditions being equal, the truck rate and the car rate would be the same.

Prior to the first of the year or substantially the first of the year, we charged the rate fixed by the arbitrators. With the exception of a little over four years ago, we put in a rate that wherever a man had the equivalent of a carload in number of weight coming in by truck, he was charged the same as though it came by rail. That was about four years ago, I believe.

About the middle of December, 1932, we made a change in our tariff. The object of that change was to create a change in the conditions which I have described as a fair condition as between the shippers to our company to bring about a more equitable condition to cover that situation. In taking care of the so-called light minimum weight cars, [fol. 831] that is, 10,000 pounds or over, we felt that we should also take care of the same amount of stuff coming by truck if in one owner.

The Chicago Producers Commission Association is a non-profit organization, and if the charges that are made are in excess of the cost of rendering the service, that portion is owned by the membership, and we have the right, under the law, to make a dividend under the Packers and Stockyards Act, if our Board of Directors choose to do so.

As to whether I believe that the revenue produced under the schedule provided by the arbitrators represents a schedule which provides under the usual operation of the commission houses at Chicago any more than a safe margin for the operations usually encountered at Chicago, not as to the inequalities in the tariff but as to the total sum to be derived from the application of the rate on the whole; the only way I can answer that is to say that our revenue in the past seven years has only been sufficient to handle the business in an efficient manner, build up a reasonable reserve and take care of the expenses and extra services not required in the commission business.

We do not feel that we have engaged in any wasteful conduct and we have stressed service refunds rather than cash. [fol. 832] When you consider our policy, not only of

handling the current business but preparing to handle an increased percentage as we go along, I do not think we have been overmanned. I believe the general policy of a house should be to take care of what they believe may be an increase in business, at least to a small extent, a reasonable extent.

I believe it would be unreasonable or unfair to expect that employees would be constantly and regularly engaged in handling the full capacity that they can handle on different days of the week, different days of the month or at different seasons of the year. It would be impractical to try to run a commission business on that kind of a basis, if you were counting on increasing your percentage of volume. I would naturally expect that anyone engaged in a competitive business of this kind would strive to be able to improve their conditions.

Naturally, I feel that the money that we have expended for advertising or soliciting, as I have heretofore described it, was neither extravagent nor excessive, but was the result of the exercise of sound judgment. I do not feel that in such expenditures we engaged in extravagances. We might have slipped once in a great while and spent a little more. We spent no more than would be expected in a business of this sort. If we could have handled our business with fewer employees efficiently, meaning to sell efficiently [fol. 833] rather than to just sell, and also with due regard for the future, we would have done so. The volume of the Chicago Producers Commission Association was as great, or substantially as great, as any other agency on the market. We had more than one man engaged in the sale of every species, and had the opportunity to demonstrate and to know as complete performance, to demonstrate full performance or as full performance, as could reasonably be expected to get from those men engaged in the sale of livestock. Of course, if it had been possible to have reduced the number and do the work, as I have described, in an efficient manner, I would have done so. The receipts vary as between even some of the larger firms. For instance, a firm might have a big percentage of straight carloads, whereas, we would have perhaps fairly close to the average percentage of straight carloads and cooperative loads and trucked-in stuff.

"Q. Well, looking back over your business in 1932, you believe that the costs that are reflected in the figures representing minimum outlays in properly handling the business which you did handle, with this exception, that you indicated that you expected to handle more business and, therefore, tried to create a safe margin to cover that condition? [fol. 834] "A. I will answer that question this way: With this exception, that your hindsight is always better than your foresight. You said looking back over, but, as we went along from day to day, looking forward, I do not think we could have done any better.

Q. And a man in this business is bound to conduct his business with regard to the future?"

Our volume was great enough to demonstrate efficiency in the matter of performance of the men engaged in the business. Our business is substantially as great as the entire business at Oklahoma City; and it was as large, or almost as large, as the entire business at Wichita, so that we have in this instance a firm as large as the total business done by all the agencies at these markets. The only record we have kept as to actually what our individual salesmen do in the way of volume of performance is in the personal inspection and checking up and then on the averages.

Our average per salesman in the cattle department was about 700 cars, 7 salesmen, and about 5,000 cars or equivalents.

In hogs it was about 6,600 cars with about 800 off for the number that the assistant salesman handled in odd lots, which would leave about 5800, and with the manager and 4 salesmen, it would be five into 5800, which would be al- [fol. 835] most 1,150. And in the case of sheep it was a little less than 2,000.

"Q. I haven't the figures. We had to guess at it, because I didn't have them.

A. That would be 1,682. I would estimate a little over 1,000 cars for the head salesman and around 600 cars for the other.

Q. Assistant salesman?

A. Yes, sir.

Q. So that it would follow, would it not, that it would be reasonable to assume that on account of the large volume that you have and the nature of these receipts, and the spread from season to season, and the possibility of getting

mixed performance, that that figure should be regarded by comparison as one which could not be obtained by a smaller firm that would not permit of as much diversity?

A. I think that is so and I think further that consideration should be given to the amount of market service in the country we give in connection with cattle and sheep, whereas, we do not give much of that in connection with hogs. In other words, those salesmen are on duty just as much in the country as they are here."

[fol. 836] The main objection I have to the existing tariff is the method of levying the charges rather than the total sum of money charged. I don't think that due consideration is given in this rate making to volume. I think in our particular case we have a volume sufficient to produce the maximum in performance in connection with our employees. The profits that were made both years went into reserve and the rest of it went into those other services. I don't think that the rate for the service which we rendered produced an excessive profit. The rate which we charged was not exorbitant for the service rendered under the circumstances. If the rates were drastically reduced, there would have to be a readjustment, and whenever you have readjustments the people with the ownership of the products to be sold suffer during that readjustment.

Selling conditions on the Chicago market have certainly been discouraging in the hog market the last month and a half.

Usually anyone you would consider for promotion or employment could sell what might be regarded as an average amount, if he got them. You just sort of take that as your major premise when you first start considering a man, and then you go ahead and try and determine how good a job he can do, that is, in addition to honesty and loyalty, and when you get down to ability, he has got to have the [fol. 837] ability to grade the livestock that he is going to sell, in the first place; and in the second place, he has got to be a man that keeps up with all the conditions of the market here and at the other markets and meat markets and all the information of that nature; in the third place, he has to be able to be enough of a student of human nature to get along with the buyers, be a good trader; in the fourth place, he has got to be pleasant and cheerful and satisfy the customers so that they will come back again, and you

have got all those things—I mean ability of a salesman can be divided into probably those four classes in addition to the fundamental requisites of loyalty and honesty. And these conditions are not governed or controlled by any other influence, as in the case of volume. Volume is beyond the influence of the man himself, except insofar as, if he measures up in ability as defined, he will be apt to get whatever a normal average amount might be coming back to him. That is, you don't want a salesman that drives business away from you. But certainly you want a salesman that, by reason of his excellent service, will cause other people, through the satisfaction that they get from the employment of his service, to come back to us and to look to us as a good outfit.

Redirect examination:

When I mentioned drastic reduction in my cross-exam- [fol. 838] ination, I had in mind rumors of 30 to 35 per cent. I mean a definition of "drastic" in that case.

Considerably less than half, I would estimate about one-fourth, of our firm's business is done for non-members.

I think our salesmen can sell efficiently a little more than the average of all firms.

As to whether I believe our salesmen can handle as much livestock and sell as much livestock as the other salesmen in these yards, there are so many salesmen on the market and it covers so much territory that I do not believe I could answer that accurately. In my opinion, our firm could handle more livestock of each kind than we are now handling, I mean to sell, handle and sell efficiently, but I don't understand that we can do that with the same force that we had in 1932.

We could have handled, with the same force, more business if it had been received on light days and active markets. Our receipts will come heavier on some days of the week than on other days. I suppose we carry over less livestock than the average commission firm except that we do carry over in our subsidiary. Naturally, they handle less on the other days than they do on the peak days.

Last year our peak day for receipts was a little over 100 loads. It varies from week to week. By peak days I mean, first, the days when we have the heaviest receipts, and, [fol. 839] secondly, the heavy receipts into the market. The

peak days of the week vary. Tuesday, Wednesday and Thursdays are the three peak days usually, which omit Monday and Friday as peak days. As to the largest of the three peak days, that varies a good deal according to how we pull it in. As to whether our same force could sell as many on Monday as they sell on Tuesday, Wednesday and Thursday if we had the receipts, I think I could best answer it by saying that when I first came here they used to be Mondays, Tuesdays and Thursdays and that Monday still remains the heavy day. The only answer that I could accurately give would be that we might be able to handle a little more business on some Mondays, and that if we could not handle and sell it efficiently, we would put on a little more help. We do not investigate to determine whether a salesman controls any business when we employ him. We employ him practically entirely on the basis of a man's ability from the handling and selling standpoint.

In the fall of 1931 in the hog department, our hog department manager at that time left to become sales manager of the Illinois Livestock Marketing Association. A little later on, one of our hog salesmen became manager of the Illinois Livestock Marketing Association cooperative concentration point at Galesburg, Illinois. The last fall, an assistant salesman went from here down to Galesburg. This spring, in [fol. 840] April, I think it was, the assistant hog salesman went to Bloomington, Illinois, as manager of the cooperative concentration point there of the Illinois Livestock Marketing Association.

As to how long a time I think is required to qualify a man to become a bull salesman, well, we try some out and they never become bull salesmen. Of those who do become accredited bull salesmen, some require a longer period of training. I do not know as I could give you an accurate estimate of the average length of time. Our present bull salesman ran a concentration point for Armour at several different points in Iowa for a number of years. All of our salesmen have had several years experience before they were actually put to work at selling, either here or somewhere else. Even assistant salesmen, selling a few odd lots of hogs, very rarely do we ever let a man try to sell any of them unless he has had at least two years' experience here yarding and sorting before.

I think I stated this morning that our policy had been so far to put extra profits into reserves and into extra services with an idea of increasing our volume and thereby acquiring a larger bargaining power on the market.

Recross-examination:

The balance sheet that has been introduced into the record will reflect the facts with reference to the disposition [fol. 841] of the earnings but it would have to be analyzed to show what went into extra services and what went into regular services. We regard those services as advisable and justifiable.

The selling effort involved in disposing of the receipts on a Wednesday of one week might be entirely different than Wednesday of the next week. From the standpoint of the receiving of receipts and handling and selling them, I think those three days could be called the peak days on an average, that is, just from that standpoint. On some of those peak days we don't have to work any harder than on some of the light days. If we had a good market at one season of the year we might expend a great deal less selling effort in disposing of our peak receipts than we would on the same day at another time of the year when we had a bad market; so on that basis they couldn't properly be used as an average of the amount of time spent in selling a certain number of head.

Recross examination:

I think my Board of Directors expected me to conduct our business as cheaply as possible, consistent with the rendition of good service in 1932. And I attempted and did carry out that wish as well as I could.

ALBERT FICKLER, a witness called by the Government, testified as follows:

[fol. 842] Direct examination:

My temporary address is 4300 Ellis Avenue, Chicago, and I am general manager of the Farmers Union Livestock Commission, Chicago. That is a market agency on the Chicago market. I was elected to that position March,

1929. I have been acting in the capacity of general manager ever since that time. Immediately prior to that time I was farming and a member of the Nebraska House of Representatives.

My experience in the livestock business has somewhat varied. It goes back over quite a few years, my full experience in livestock. Well, my father ran the first meat market ever was in Platsmouth, Nebraska. I learned that trade under him. I did not like the butcher business and I chose the farming as my profession and moved to, went to my father's farm, and followed that occupation for a number of years, and I think in 1922 I was elected on the State Board of Directors of the Farmers Educational and Cooperative Union of Nebraska, and was appointed a Director on the Board of the Farmers Union Livestock Commission at South Omaha, also represented Nebraska at Sioux City, Iowa, as a Director, and upon the reorganization of that marketing agency, I was elected President of that Board in 1924. I served in that capacity until 1926. Then I was requested by the Board of Directors to assume the duty of general manager of that marketing agency, which I did, and served either the latter part of 1927 or the early part [fol. 843] of 1928, and then went back to the farm and farmed and then went to the Legislature.

The Farmers Union Livestock Commission is a corporation, organized under the laws of the State of Iowa, cooperative laws of that State. It was organized I think in 1922. We handle business for whoever ships to us. The membership in the agency at the present time—Farmers Union of Iowa, the M. F. A., of Missouri, Farmers Union of Wisconsin, the United Farmers of Illinois, they have a director who represents, as I understand it, the unorganized patrons of the market. The M. F. A., of Missouri is a cooperative marketing agency. The same is true of Wisconsin; South Dakota is also a member, the Farmers Union of South Dakota.

It is a general marketing program of farm commodities as I understand them. Yes, they all derive their rights in the marketing agency through a membership.

My duties, as indicated by the words "general manager," are rather general in scope. I oversee the different departments here at the terminal agency and am called upon by the member organizations to meet with them, help organize

shipping associations, and bring about harmonious working arrangements, deliver addresses in the interest of livestock marketing, sometimes come down to see you in Washington when we get in trouble.

[fol. 844] To begin with, the Board of Directors define the general policy. I function as an executive officer in carrying out to the best of my ability those policies. I am necessarily called away from my office here in Chicago, and I have departmentized the different groups and have a department head for each group. What I mean by that is that there is a head salesman in the cattle department, who would be held responsible in my absence for the cattle department. That is true of the sheep and the hog department, also. The office department is the same. Nearly every day when I am in the office I, as general manager, confer with our various department heads from day to day in regard to their activities. As to just what matters would be handled by the Board as a guide to me in the management of the concern, we could discuss the matter of overhead which is paramount. We mean to comply with the rules and regulations that govern livestock marketing. We discuss rates and the policy of doing organization work or not doing organization work in certain territories. By that I mean organizing shipping associations and sometimes federating of different organizations that wish to affiliate with us in that particular territory. The method of handling finances, anything that would, in the judgment of the directors or myself, tend to render a higher degree of efficient service to our patrons.

[fol. 845] Our Board of Directors meet quarterly but generally adjourn subject to the call of the chairman.

I do not know without referring to our records what percentage of our business is done for members as compared with the percentage done for non-members. Our business for the shipping associations has been decreasing because, in my judgment, direct marketing is one of the most important elements that enter into that. The growth and development of the trucking business has influenced it; that necessarily goes along with the direct marketing program. There are influences brought to bear upon the trucker that do not enter into rail shipment business. Association consignments, when they come to market, consist of livestock usually belonging to more than one owner. The purpose of

the shipping association is to assemble livestock from different producers and make up carlots and consign them to market. That is the fundamental principle of the livestock shipping association.

As to how we sell shipping association business, it varies widely. The nature of our marketing agency is such that we are owned and controlled by the membership and we try to conduct the business according to the wishes of the shippers. Sometimes we will have instructions that come within the rules and regulations of handling livestock that are directly opposite to any other shipping association. I think it is as often the case as otherwise that we receive instruc- [fol. 846] tions from a shipping association manager in regard to the method to be pursued in handling a consignment when it reaches the market. If it is left to us we handle it in the way that would be the least expensive and give the greatest net return to the shipper. The usual practice is to prorate these association consignments. Our prorate sheet is a large sheet, perforated and each individual owner's abstract of his transactions is contained on that sheet and if a remittance is to be made separate there will be a separate check returned in accordance with the instructions from the manager as to the disposition of the proceeds. It happens that the association manager will instruct our firm to return the proceeds in one check to him along with this master account sale. In that event, he distributes the money on the basis of the information which we furnish on this master sheet. The usual occurrence is that the consignments of shipping associations are plurally owned. In such cases the manager of the local association furnish- us with information as to the ownerships in the carlot. We get that from what they call the home sheet that accompanies it with the weights and names of the different owners and the markings. It does not always check but he is supposed to mark the live stock in a certain way so that it checks with the home sheet. We have used different methods but the method that we think is the most effective is the curve bladed scissors and clip the hair in different designs, [fol. 847] or the bristles, as the case may be.

If, in a consignment of that character where we have livestock belonging to several owners but the livestock being of the same grade and class, our firm sells them in a group or classifies them in groups as to grade and quality,

irrespective of ownership for the purpose of sale. I think that is the practice but there may be divergence from that. In fact, the instructions might be different.

You might have two or three farmers go together and consign, we will say, a carload of hogs, and mark them, and each one require a separate account of sale, separate check, and demand that each one's livestock be weighed separately, whereas, if a carload of hogs came from a shipping association, the manager would say, "Use your own judgment and remit in the name of the shipping association to a certain bank the net proceeds." There is a wide scope of difference that could enter in. That is only one or two of them. I think there could be more. We receive instructions from the shipping association to deposit proceeds directly in the bank for the entire association along with the master sheet, and send it to a local bank, or place it here in a bank in the city, subject to the credit of a local bank. Also remit by currency. There was a time that the most common method of remittance was by cash or its [fol. 848] equivalent. They are still demanding cash since the moratorium in some places where they do not have banking facilities. We hope that situation will clear up. I think that method of making remittances has become more frequent within the last two years. It was a very rare occurrence in my earlier experience in the live stock business.

We have lost lots of shipping associations that the method of direct buying has in other firms put them out of business, but, as a rule, they do not organize a shipping association until there was a local demand. If there is a local demand for a shipping association, they usually patronize their own industry.

My work in the country is not confined solely to the matter of organizing shipping associations. I help in federating or bringing together different organizations such as, to give you a concrete example, the milk pool of Wisconsin is federating with the Farmers Educational and Cooperative Union of Wisconsin and both the groups requesting my presence at their meeting.

I have not personally sold any livestock on the Chicago market. I have advised, where the head salesman and I would discuss matters.

I have a field man who devotes his entire time to general work or organization and soliciting those fellows who have strayed away from the fold. He spends his entire time in the field.

[fol. 849] Frequently my salesmen are requested to come to the country and when they get there, the customer will say, "Well, I want you to meet my friend over here." He may or may not have been a shipper of ours. He will go over and he will answer any questions that in his judgment he feels capable of answering, and no doubt he would extend an invitation to him that if he saw fit, he would like to handle his livestock if he comes to the Chicago market, but if he was in Kansas or some other state where we had a terminal agency, they have explicit instructions to not favor one or the other market but to give the shipper their best advice and then say "go to the market which will net you the highest returns for your livestock."

The purposes for which shippers request the presence of our salesmen is a pretty broad question. There are some questions asked you when you get there, something that you or I might not consider directly pertaining to livestock. They ask you, what is your opinion as to the gain that these cattle have made, perhaps we have bought the particular stock that they are viewing. There are a number of different questions that come up during these meetings and it would be pretty difficult to enumerate all of them, but those are the major questions as to what in your mind are the existing conditions that would warrant feeding longer, or if the stock should be marked in a semi-finished condition, or whether the trade was demanding a higher grade [fol. 850] of finish; many different angles enter into that conversation. We comply with the request to go to the country where it is practical to do so; we are the hired men, and if we ignore them too frequently, we are apt to hear from it. As to whether we will or will not comply with the request, it would depend upon who they would ask to come. It might be a salesman and he would not feel justified in leaving his post of duty at that particular time. If it was myself and I could leave the office, I would try to comply with it. I have instructions from my Board of Directors to do so as much as I deem consistent of the field work, but they may, the head cattle salesman and the sheep man and the hog man, in that case, he would try to comply

with that request if it did not interfere with the duties of that particular individual.

I try to have leeway to arrange, if possible, for several of our employees to rotate so that we will eliminate the cost of making a long trip for one individual case. The shippers are fairly reasonable in respect to the head of livestock which — have, they would have a carload or more if they would request you to make a special trip to their place to see them, unless you were in that immediate vicinity and then they would probably ask you to come for a lesser amount. Our firm does not make a special effort to obtain truck-in consignments not any more than any other con-
[fol. 851] signments. The shipping associations who consign by truck are not very many. I think on the majority of our truck-ins the trucker would be instructed by the shipper as to where they were to go.

The yard help is frequently shifted. The heads of the department, they very seldom, I don't think they do any selling but to give you a concrete example, I will go down to help yard hogs, sheep or cattle, if it is necessary, but I would not undertake to sell. I would not consider that they were efficient to step from one species to another and efficiently sell. In other words, our salesmen are confined each to his own department. All of our salesmen render more or less service in the office. I think you would get the details of that much better from one of them, but they do various jobs in the office. They look over the home sheets and segregate the tickets, help those that are making out the account sales, giving information. If there is any confusion or errors they help straighten them out more rapidly. They do quite a little bit of very necessary work there assisting the office force because they have been on the ground and know the transaction up until the time it arrives in the office, and there is some clerical work done, as you know, before it arrives at the office. That would be in the way of feed tickets, scale tickets and the markings. They keep the markings, all of them, all separate and see that they are corrected with the home sheets.

[fol. 852] Our firm operates independently, speaking from a financial standpoint, from any of the state associations with which it is affiliated. We pay for our advertising in

the official organ the same as anyone else would who advertised in it. I have reference to the Farmers Union paper of Iowa or of Nebraska, or whatever state it was from; we would carry an ad in it like we would in any other newspaper. We advertise in some of them every two weeks, I think some of them are monthly, whenever they are published. We carry a regular ad in those papers.

Our national president mentions the livestock marketing agencies sometimes in his radio address. We carry a few ads in local papers where we have shipping associations that have requested that we advertise in the local papers. The circular, of course, goes to the mailing list. It is something in the nature of a market letter, and while not altogether, it gives a resume of the market, the head salesmen and their addresses, the manager's name, and there might or might not be some little comment from the salesmen. It varies and changes the copy quite frequently. As to the time it is issued, that depends on how busy we are. We try to get it out on Thursday, and sometimes we don't get it out every week. We maintain a regular mailing list for that. Our mailing list is revised from time to time and if some of our customers have gone out of the livestock busi- [fol. 853] ness or move- away and we don't happen to have their addresses any longer, then they are discontinued and we don't try to mail those to people unless we, in our judgment, think they are interested in them. I think it is the rule that we mail them only to customers. There is a personal market letter that would be mailed and that is true of the circular. If he was not a customer and would request a circular or a market letter, he would be put on the mailing list for whatever reasonable length of time he would be interested in it. These circulars quite frequently contain mention of sales of a certain species and the weight, if they see fit to make a little comment on it. They are made up by our advertising man and the head salesmen.

We laid off four or five during the period of 1932 up to the present time. They have not been replaced by other people. One of them was out of the office and the other three or four, whichever it was, were yard and alley men. I don't think I laid off anybody in 1933. It was part of an economy program on the part of our firm. During the past year or two we have made changes in the business by way of reductions in salaries all the way around. I think it

was 15 per cent on all employees drawing over 100 dollars a month. It was made at two different times, but it all occurred, I think there was part of it, in 1933. We did not take on any additional employees in 1933. There are times [fol. 854] when we employ extra yard help. After reductions in other expenses, we tried to economize in the office in regard to supplies. We discontinued paying scale men.

I generally discuss hiring or discharging employees with the Board of Directors, if there are any changes of great importance, like the head of a department, or something like that, but otherwise it would be left up to my recommendation. I have not hired anybody for several years and when I did I hired them and notified the Board that I had hired them and they said "O. K." We try to cooperate.

The stocker and feeder division pays its own overhead and it is purely a matter of bookkeeping while the funds are all, an interlocking arrangement, but they are segregated so that we can determine whether the stocker-feeder is operating at a loss or a profit. We cannot predict just what would be the outcome of that. Sometimes it would show a loss in a month and the next month will wipe it out and leave a little balance. We don't try to operate it at much above the cost of operation. We try to give the shipper the benefit of the raise in prices, if there be any, and any profits that one may make may be wiped out by a loss and the other fellow would be getting the benefit of that. We fill no orders from the stocker and feeder and only [fol. 855] handle hogs. We have never put sheep or cattle through the stocker and feeder.

I could not quote the tariff of our firm but it is the same tariff that the Exchange uses. We follow that tariff.

In my judgment, if there is not some way of lowering overhead without impairing efficiency, speaking from my past experience in regard to service rendered, this tariff is not much out of line. I have not made a cost accounting study so that I would not want to, while generally I know there is more service rendered for the same number of livestock arriving at a terminal market today by a large percentage than it was, say, ten years ago, when I was actively engaged in shipping livestock for my own account. I operate my farm with a tenant.

There are certain fixed charges here such as rent and bonds that cannot be avoided, and we have no power, or,

at least have not been successful in getting them reduced, and with those existing conditions it is at least contributory to the necessity of charging the existing tariff.

Cross-examination:

It is much more expensive in a general way to operate in Chicago than at Sioux City where I was general manager, and I think that is also true, from my observation as direc- [fol. 856] tor on the Omaha Board of Farmers Union Stock Commission. I think it is true that the arbitrators did a just thing in allowing the Chicago market a rate higher than was allowed for Omaha. I pay particular attention to the overhead of a business that is entrusted to me as general manager and I pride myself in operating as economically as is consistent with efficient service, and I am continually trying to economize in every way that will not impair efficient service, and I am unable to lower my per car cost of operation on this terminal in comparison to the other two terminals which I have referred to.

From a cooperative standpoint, my personal ideas are that a rate that permits you to establish reserves and branches out of the present tariff would be beneficial to the producers of livestock. A rate which provided only the bare cost of rendering the service would result in my judgment: That if the cooperatives wish to establish those reserves or extend service which they deem necessary, they would have to devise some other means of providing that revenue or do without that service.

I think that it is true that the rate does not now produce under the most proficient method that I know a rate for this service which could be regarded as unreasonable or exorbitant from my viewpoint. I have always looked upon Chicago as a basic price fixing market, and anything that [fol. 857] would tend to lessen the efficiency of that market would ultimately reflect detrimentally to the livestock interests. Our Board of Directors expect me to run the business and keep within our income.

The majority of our patrons are not objecting to the present tariff but are much more concerned in cost of production of livestock than they are in the service charge at the terminal.

I think that our stocker and feeder account with hogs enables our salesmen to effect sales covering a larger num-

ber of head on peak days than if we did not use that account. I think it has a direct bearing in helping to clear when the market, in the terms of the yards, flattens out or on a heavy run. To what extent I am not prepared to say. We use the stocker-feeder account when, in the judgment of the manager or the salesman, the price offered is not what we believe is the full strength of the market and, in order to procure for our members that have shipped to us, the full strength of the market, we make use of the stocker-feeder account. It is correct, in my judgment, that the use of this account of necessity creates a higher performance than it would without it. I suppose it has been difficult to sell and get the price on other markets. Not having operated on Chicago prior to 1929, I could not say what my [fol. 858] previous experience had been, but, in my judgment, about the hardest four years of my livestock experience have been the last four at Chicago. Our difficulties are multiplying rather than decreasing. Naturally, that tends to increase our costs of operation rather than to decrease them. I would not, from my livestock experience, want to make an estimate of the maximum performance of any salesman. I had four cattle salesmen in 1932. If I had thought the amount of livestock sold by the four salesmen should have been done with two or three, I certainly would have dispensed with two, but, in my judgment, those were men who had charge of a particular type and I deemed it justifiable to keep those and dispense with the services of men who did not require such long training in their particular department. We curtail overhead by reducing salaries in 1932 to meet conditions. As to whether our salesmen were reasonably busy in the performance of their service throughout 1932, my personal observation was that they had devoted the required time that was necessary to handle the volume. I might add that their own comment when they came into the office was that they had never worked harder to perform their duties that they had, and sometimes there was a question mark in their mind whether they had maintained their former standards of service.

[fol. 859] Redirect examination:

Over the years of my experience and on a comparative basis, I would say that the condition of the live stock producer today is unprofitable. In 1920 I was operating quite

extensively. I had some very nice profits from feeding operations and grazing and raising. In the latter five years it got where it was not showing much profit and my personal observation since that time is that it has grown worse. I stated that it is generally more expensive for me to operate our agency here at Chicago than was the cases of the houses of the Farmers Union at Omaha and Sioux City. There are several particular items of expense that I recall at this time. In the first place, a salesman on this market is usually able to command a higher salary than on the other markets. I think that is justifiable because salesmen on other markets have a yardstick, so to say, to guide them, and by that I mean they have reports from this market which is looked upon by nearly every salesman as the price-fixing market of the United States. Another reason the methods employed at different terminals, the size of the yards, the proximity to the unloading chutes, while in Sioux City the yard company delivers the livestock to your pens which is not true here; that is one of the large items of expense.

[fol. 860] Our cattle pens, while not the farthest from the railroad unloading chutes, the most direct course, if you are not delayed or made to detour by congestion is approximately one mile, and that is very close because I measured that with the pedometer which records the distance quite accurately. Your office rental is higher, which is a considerable item. Making trips where you are requested to come to the country, the necessity of traveling expense because of the greater distance. There may be some smaller items that enter into this, but I just don't recall. Those are the principal ones that I recall at this time.

[fol. 861] When I said that a reduction in rates might make impossible the extension of services, there are different services that that would affect. As illustration, if the rates do not provide sufficient revenue to make these trips to the country, then they would have to be discontinued, which in turn would reflect detrimentally to the producer of livestock, unless other means of revenue were provided, and if it became necessary to lower salaries to a point where we could not maintain the highest standard of efficiency that we now have, that would be one of the possi-

bilities. There are other services, of course, that it would affect, if you did not have sufficient revenue to maintain and had to bring down your cost of operation in proportion to the earning power. If you had to work your office force frequently overtime or I would say if that became the rule rather than the exception, there would not be the efficiency there that there would be if they were working at a rate that did not overtax their nerves. Necessarily there would be more mistakes creep in if they were working under pressure and long hours, which sometimes are very costly. If this condition arises, in my judgment, the last services to be dispensed with is the salesmen, and if you had to take some of the salesmen away from their duties to make these long trips to bring the livestock to the alley, there might [fol. 862] be a time that he would be absent from his alley when a buyer would be there and he would lose a sale. There are so many different angles to this, it would be difficult to enumerate all of them, but those are the more important ones that I call to mind now. We think the Farmers Union service is up to the standard. As far as I have been able to personally observe the sales and familiarize myself with the prices that others get, I think that our salesmen obtain as good a price for livestock as any other salesmen by and large on the market. I do not know if our salesmen can handle as many livestock as any other salesman on the yards. I have not hired any salesmen since I have been with the firm. As to whether I find that any of our patrons felt that the rates were too high, I think my statement was that the majority of them were not complaining about the rates. I have, however, had now and then a complaint.

As to whether I think a smaller number of firms could handle the business on the Chicago market just as efficiently or more efficiently than they are now handling it, I am somewhat at a loss in answering that question because I don't know the efficiency with which the other firms are operating but I will say this, that if I was justified in adding a larger [fol. 863] personnel that I would be a more factor in determining price, in my judgment, providing the purchasers were not receiving the major portion of their supplies through the direct marketing channels. It would be consistent to good business principles to add to our organization by way of personnel in response to increased volume.

MR. HAROLD SUMMERS, a witness, called by the Government, was recalled to the stand and testified as follows:

Direct examination (continued):

I am the same Mr. Summers who is employed by John Clay Commission Co. and who has heretofore testified in this hearing. When in the country soliciting, I solicit either kind, both rail shipments and truck shipments, but mostly cattle shipments. I presume other market agencies solicit the same shippers that I solicit. I have never run across representatives of other concerns in the field soliciting the same shipment, but probably they have been there after or before I have been there, I don't know. We go to all the shippers who ask us to go out that we can possibly get to. Of course, occasionally there are times when a shipper is away down in the country somewhere that would not be of any benefit to us to go down three or four hundred miles to get one load of cattle, but when anybody wants them to go [fol. 864] within reasonable distance we go out. On these soliciting trips, I would not attempt to appraise other livestock than cattle, because I do not know the market value of them.

I would not say that there was any great deal of difference between the markets of 1933 and 1932 with reference to the difficulty in selling livestock, until about the last two months. We had a little better markets during the last two months than we probably had any time last year.

The packers were a little more active buyers than they were last year. The demand was a little better. I recognize the term "good days" and "bad days"—we call a good day a day when packers and order buyers are active buying cattle on the market, fast on the market, and not dragging along all day. On a bad day, it drags along all day and lots of times you cannot sell some of the cattle which you have and you have to carry them over until the next day. I can give you an example: Take a day like yesterday with a slow market; the market was about 25¢ lower and we had to carry over, I would say approximately about 40 cattle last night in the butcher alley alone. Yesterday we received 18 or 19 loads of butcher stuff. It would average about 30 [fol. 865] head to the load. Two of us worked on them. I did not come in from the yards until about ten minutes to five last night. I sold some few odd cattle right up to 4 or

4:30. That is not to packers but to a few feeders or fellows like that. We do not carry over cattle every day. It may be once a week or once every two weeks. That is, of course, in the butcher stuff. I do not know what they do in the steer alleys, but in the butcher stuff; it runs once a week. We may carry over some cattle in the fall of the year when we get big runs and naturally the market may be rather bad and we may carry some over two or three times a week.

It has not been my experience to carry over cattle on good days. Carrying over happens only on what we call a bad or slow day. The commission man attempts to get a good fill on cattle before offering them for sale, at least we do.

Cross-examination:

I understand that the schedule provides for a different rate where a carload contains cattle and calves than the tariff provides for a carload which contains cattle only. I sell calves as well as butcher stuff.

"Q. Do you believe from your experience in handling butcher stuff, that that distinction or that difference is [fol. 866] justifiable judging from the service that is performed in connection with a carload of straight cattle or a carload containing cattle and calves?

Mr. Miles: Mr. Examiner, that question is objectionable and is objected to on the ground that it calls for an opinion and is a matter of law which only the Secretary can pass upon.

Mr. Boyd: I submit, Mr. Examiner, that the Secretary can only arrive at his conclusions by using the experience of people who are well trained in this business, and if the Secretary can find out any other way than by asking a question of the witness, then I would like to know what it is.

Mr. Miles: No more argument.

The Examiner: Objection overruled.

The Witness: Yes, I do."

I agree with Gene McAdams that the salesmen for John Clay & Co. sold more livestock per salesman by reason of the fact that the business was distributed more evenly or more equally throughout the days of the week because John Clay & Co. had houses at other markets that caused the supply to be more evenly distributed throughout the days

of the week. I think I would concur in Mr. McAdams statement to the effect that during 1932 because of the necessary [fol. 867] liquidation of cattle paper that took place, that our receipts were greater and more evenly distributed throughout the weeks on that class of business.

I never heard a shipper complain about commission charges. I meet and discuss all questions with them in my travels and around the yards, and have traveled over this part of the country without having anybody complain about rates.

Redirect examination:

I would say that John Clay & Co. at Chicago receives butcher cattle to sell from pretty nearly all over the country. It is not from any certain one territory. We get a lot of butcher stuff from Iowa and Illinois, Missouri and Nebraska. We get butcher stuff from Indiana and we have gotten them from Ohio; from Ohio in small quantities.

Mr. Charles Dunbar, a witness called by the Government, was recalled to the stand and testified as follows:

Redirect examination (continued):

I don't think it is true that the vast majority of our cattle are called range cattle, that is, that come from the range country. I could not tell you off hand what proportion of our receipts would be classed as range cattle.

We sold between 17,000 and 18,000 range cattle for 1932 and about the same number for 1931. I do not personally [fol. 868] sell all the steers. There are two of us (salesmen) on the heavy steers and two in the light steers and stockers and feeders and yearlings, four in what we call our steer alley. I do not sell more steers than any one of our salesmen. At the present time Mr. Thomas sells the most and that has been the case since our steer salesman left us a year ago the first of last January.

Recross-examination:

I have frequently been injured in handling cattle in the yards. You are taking a chance every day with your life in a way, unless you are very careful, and it is no uncommon thing for one to be hurt quite severely and still go on with

his duties. He always feels as though he must finish his day's work before he leaves, regardless of how badly he might be injured.

We feel that the two partners' activities in our business are in a large way responsible for the success or failure of our business. I would not think that we could find a man that would fill the position as my brother James does. In fact, as far as my viewpoint is concerned, I think it would be impossible for me to because there are things that we could agree on and do agree on that it would not be possible for me to agree on with an outsider.

In arriving at the worth of an owner, I think it would be an impossible method to find out what he was worth by [fol. 869] just comparing him with what just a salesman would be worth to the firm. There is no comparison between the two. If there is a salesman that sold approximately the same number of hogs on the Chicago market, that is employed and not an owner, I do not think that my brother James' worth to Walters and Dunbar should be found by the amount of money that the hired salesman was making as an employee or as a non-owner of another firm.

I don't think there is anyone that should be even permitted to attempt to make rate, a commission rate, who is not familiar with the business and a partner or owner, or part owner in a commission firm, because it is something that is entirely foreign to it and it is impossible for them to be familiar with what rates should be charged. It would be like taking a cattle salesman down and asking him to sell ribbons in one of these department stores, because, when a man comes in from the outside and attempts to figure out on what basis a commission business should be run on, he is meddling with something that he is not familiar with and never can be unless he gets his years of experience, and, in my opinion, it would be utterly incapable of attempting to make rates of any kind or ruling on the rates as they should be. I agree that the appointment of a committee by the Exchange, of people that are acquainted with the men and the business or are supplied with the information is the best method to arrive at the [fol. 870] value of an owner where the owner himself has failed to state his value and set it up on the books but has only had a drawing account or may not have withdrawn any money in the way of salaries, and in order to fix a

proper salary for him, they use that method. They would be the only ones that I think are capable of determining what the proper salary should be.

Redirect examination:

Q. Do you mean to say, then, that you do not feel qualified to answer whether a partner in firm A would be worth the same or more or less than a partner in firm B?

A. I am qualified to answer in our own business and give you facts, but I do not think that it is any of my business to try to tell you what the other fellow should do, when I am not on the inside and do not know the conditions under which the other fellow is compelled to labor.

I cannot see wherein there should be different rates for different firms because one firm is operating a little more economically than another.

With reference to the use of an appraisal committee for arriving at the salaries of owners engaged in business at [fol. 871] St. Louis; the committee might have known the men and they might know a little something about the business, but I would consider them utterly incompetent to set the earnings of any individual because the earnings of no two individuals are alike in the managing and handling of the livestock commission business.

I don't want to criticise the action of that Exchange but I certainly would not go outside of our own Exchange and outside of a firm to select men to decide or determine the value of those men in their particular line of business because I don't think the outsider is as competent as the men who are on the inside to render a decision of that kind. Then, along with that, I might add that they could be right in assuming that a man that only has 100 dollars a month drawing account is worth more money and that he is drawing less than his value.

HARRY W. WILLIAMS, a witness called by the Government, testified as follows:

Direct examination:

I live at 8100 South Peoria Street. Am an order buyer and trader in hogs on the Chicago Union Stock Yards. I

operate a firm as a partnership. The name of my firm [fol. 872] is Googins and Williams. My partner's name is H. L. Johanesen. Have been operating as a partnership since 1916. Once in a while we get an order for a few lambs to go out with hogs in the same car, but we don't solicit sheep or cattle orders. I have been actively engaged in the livestock business since 1898. I have been active on the market since that time and bought hogs every day that I was here and I have been here the greater part of the time during that period. I first began in the capacity of a yardman, employed by Googins and Williams. This firm was started in 1865 by Mr. Googins and my father. I acted as a yardman for about eight years before they considered me a thoroughly qualified buyer and since that time I have devoted my time to buying entirely. Our firm trades in addition to buying on order to a small extent. Our firm handles all classes of hogs. Our trading is done entirely separate except in this kind of a case: during the busy times we are liable to have a load more than we can load, too much weight, that has to go into the trading account, but we do not aim to mix our order buying with our trading. Our customers are located entirely outside of Chicago. We have no customers in Chicago.

We buy for Cudahy Bros. of Milwaukee, for Oscar Mayer in Madison, Wis. and we buy occasionally for some Michi- [fol. 873] gan points. Our consistent business has been from the states of Ohio, Pennsylvania, New York and the New England states. Our customers give us special orders whenever they want us to buy hogs for them and they come mostly without my solicitation. We know what each customer wants. If they deviate from their regular line, they will specify, but if they just say "ship two cars", we know the class they use, and some of them put limits on at times, that is, the limit of price that they will want us to pay, and some of them do not. I could say as a general rule they do not except recently since the conditions have been changed, and now many, I would say 50 per cent of them, specify that you have to, "If you can buy at four and a half, or whatever the price may be, we can use a car or two."

We begin to operate on the market each day about a quarter to eight. No specified time. My partner also buys hogs. The firm employs one other buyer besides myself

and my partner. To explain how we go about our activities on any day to fill orders, we start out, three of us; each one goes in a different direction, and, of course, before, we are fortified with the run here in Chicago, the receipts, the receipts at the other markets, and in that way we form our judgment about what the market will be. Then we start out [fol. 874] to find the class of hogs that we want and place bids on them at what we think we want to pay. We attempt to buy earlier or wait until order buyers have made their purchases according to conditions.

If the receipts are small at other markets, we go right ahead and buy our hogs, and if the receipts are large at other markets, large at Chicago, we shop around in order to get the most profitable price for our customers, or get the hogs at the lowest possible price. We go according to conditions. At the time we start out in the morning, we do not usually know at that time what our orders are for the day. We somewhat anticipate them in this respect: when conditions are normal, certain firms would order on certain days because the men in the East have certain days on which they slaughter the hogs, and there would be some firms where they have two killing days. We know what the killing days are and we anticipate their order. They hold back the orders sometimes in order to try to locate some place lower than our market.

When we anticipate orders of that kind, we do not go ahead and buy the hogs, generally speaking, but we find out where that class of hogs are so that when the orders come we won't have to go and hunt for the hogs. We know where we can go and start and trade on them.

The other buyers and I usually talk over the prices we will pay for the various grades of hogs, and sometimes our opinions differ, and then we wait to see what the condi- [fol. 875] tions are, who is right. We confer from time to time during the day, quite frequently, to see what the conditions in the other parts of the yards are. If the hogs are lower and more plentiful and better quality in some one division, we will confine most of our activities to that division. Each of us work in a separate division. I usually work in what is known as the Burlington division.

In making purchases, we weigh them direct to the order, sort them from the commission firms or traders, wherever we buy them. We buy them wherever we can get what is

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most suitable for the best price. We usually do not find hogs that are already sorted and suitable to our needs. That requires going into the pens of loads of hogs and picking out the grades that we want. No later than this morning I have already been in seven or eight loads of hogs before I came over here, and ordered the grade I wanted out of these different loads, all of commission men, it happens this morning, because the traders did not have anything I wanted. Each one of us sorts as a rule. The commission man's representative holds the gate or the commission man, a good many times, the salesman, holds the gate. The kind I want I sort out and they are put into another pen before they *the* weighed, of course, and fed. The commis-
[fol. 876] sion firm weighs them. We give them the name they should be weighed to. We do not have anything to do with the hogs after that; as far as the physical handling of them is concerned, they are handled by the Union Stock Yard & Transit Co. but we watch and see that they are put into suitable pens. In other words, on a day like today, we watch to see that they are put in a pen where they won't become overheated, and in bad, raining weather, we watch to see that they are put in a dry pen where they are not half drowned and cause them to shrink, and in the winter time we watch to see that they are put in pens that are not full of snow and sleet, but all the time the hogs are in charge of the Yard Co. and they are under lock and key of the Yard Co. We have nothing to do with that, only that we insist that they be put in suitable pens. We do not employ other help in these yards besides buyers at the present time. When conditions were normal we used to have a couple of yard boys. Yes, I will explain what I mean by normal. At the present time, our customers are buying a good many hogs at country points because they claim that the good hogs are not shipped out of the country points, they are shipped direct, and the poorer hogs come to Chicago, and that necessitates, at the present time, a lot of sorting which we did not have to do when times were normal. In other words, like this morning, I sorted seven loads of hogs. Under normal conditions I could go out and buy straight loads of good hogs with the exception perhaps of a hog or two out.

[fol. 877] Now I go in, and like this morning I got 15 hogs out of one load, ten out of another, and so forth, and then

I ask the farmer: "Where are your good hogs that you used to have?" "Why, we are shipping them there. These are the tail ends." I have to buy the tail ends and make the best of it, or buy the best of the tail ends. I located one farmer last week that told me he shipped 15 loads of good hogs to one of my customers and the tail ends to Chicago. We needed yardmen formerly but do not need them now. It is because we have less volume to handle. The last yard man I let go last fall about November. We do our own yard work, the three buyers. One other of the firm receives orders for hogs which they turn over to us. We handle that on half commission and they finance it. We do not assume any financial responsibility on them. We do not do any bookkeeping on them, only just to keep a card record so that we can refer to it should anything come up. That firm is J. D. Kellar & Son. We do not receive any orders from the regular commission firms on the market. Most of our orders are for double decks, very few single decks. There is nothing peculiar about an order for a single deck. There are a few butchers in the East that do not care to handle so many hogs as a double deck at a time.

As a rule, there is more work to a single deck because that man will probably want several kinds of hogs. He [fol. 878] will want a few of this kind and a few of that kind, and it necessitates more work, more sorting than for a man who is buying a separate load of one class. We make no difference in our charge when a man orders a single deck of one kind or a single deck of a little different kind. There are particular classes of hogs that require more work on our part than other classes. On pigs and sows we have to pick up a few at a time, sometimes one or two or three or four at a time, where, in buying hogs, weighing 150 to 300 pounds, we can pick them up in larger bunches. The further work that is required on the part of our firm in connection with the orders, we have to order the hogs over, see that they are handled by the Stock Yards Co. without being bruised, see that there are no mixes or chances of mixes, see that we get the proper hogs, we inspect the hogs as they come into the chutes, see that the cars are properly bedded, and that the hogs are sent away in A-1 condition, and also that the man pays up promptly, pays our bank for the hogs. Some of our customers have different ways of paying for them: On

some of them there is draft on them with a bill of lading attached. Other people wire the money as soon as they get a wire from us, the amount, and other firms have money right here in the stock yards banks that I have the right to sign, so-called pink tickets, and I dare say when Cudahy Bros. were buying in large volumes some two years ago, [fol. 879] they used to send the money here and anticipate what they would buy and have the money sent out to my account. We telegraph our customer as soon as we have filled an order for him. Generally we say, so many head cost so much, average so much, and, if the bank is making a draft on him, we don't specify the amount of money, but if he is remitting by return telegraph to Federal Reserve; mostly we specify the amount of money in that telegram. We do not pay for those telegrams, the customer pays for them. We do not charge exchange where we have to wait until the customer remits to us through the Federal Reserve Bank. We do not have anybody on our list who is not prompt in making their payments. Where we draw drafts with bill of lading attached, we are given credit for that as soon as we put it in the bank. The bank here have a rating on everybody in the East that buys stuff here and if they think that a man is not qualified to pay that draft, they won't accept the draft. We have had no difficulty in that connection. The efforts made by us to obtain customers, we write letters and send them a card giving our quotations, or if we think that it is extra favorable, we will send them a telegram, but most of our business, our business has changed a good deal, our customers have changed a good deal in all that long period of years. Many who [fol. 880] were in business heretofore are not in business, but most of our business has been made, I would say, is where one man in the East recommended us to another.

We send out postcards to our regular customers, giving prices, just an ordinary postcard, but on that we have pigs of a certain weight, 200 pound hogs, 225, 250, and fill them in with ink. We aim to send them out once or twice a week. Of course, according to market conditions, when our market is out of line we do not send them as frequently as when we are in line. When we are in line and feel that they can afford to buy them, ought to buy here, we send quotations more frequently, but there are certain times of

the year, under the best conditions, when our market would be more or less out of line with Eastern markets, and then we are not so frequent with the cards.

We employed our buyer in 1915; during the war I had an extra one or two extra men. Since the war we have not had any extra men. On days when we have no orders we buy hogs for the sole purpose of trading on them. If we can see something that we think we could trade in and make a dollar, we would, but not when we have orders. On hogs we have bought for trading, most of the time, we have commission firms sell them for us; most of the time we do not [fol. 881] sell them on the day of purchase but carry them over. We try to get orders for them on the original ticket and if the orders do not come, and the market is over, and they are not our property, as far as shipping is concerned, and we sort them up and put them out to be sold as fresh the next day on our shipping orders. As to what time we complete our purchases in order to get the hogs shipped out that day, it depends on market conditions, whether it is a slow or a fast market. Many days we are out there buying at two o'clock and have bought hogs later than that. We always aim to ship them out the same day we buy them. We have one person at present in our office. I help him with the book work in the afternoon if we are busy and we have a big day. As a rule our orders are scattered over the week. We have orders to fill each day most of the time. I stated that I have already filled some orders this morning. When I left the office we had orders for two double decks and we had other people to write in for quotations which might come back to me. I did not go ahead and buy hogs anticipating those orders. I bought seven or eight loads today for an actual order. When purchased they amounted to two double decks. I bought part of them and my partner bought part of them. They were all of one class. I have not bought any hogs today on a trading basis or in anticipation of an order. The limit there is to the number of hogs that a buyer can buy on a day depends [fol. 882] on the run or the receipts, depending on the receipts and the quality, that would affect my ability to buy, when there are large receipts. You can go ahead and buy a large number of hogs, and if the quality happens to run good, and most of the time order buyers want the good ones, it makes it easier work so that they could buy more

hogs. We don't discriminate between rail receipts or truck receipts in filling orders. We go by quality. We will buy trader hogs just as quickly as we will buy from anybody else. And the question as to whether other things are equal depends upon the quality and price. I have never bought hogs on orders to be shipped by truck.

Cross-examination:

The order buyers at Chicago represent usually the slaughterers of hogs that have their plants East or South of Chicago, mostly East. With the exception, of course, at times, I buy for those two Wisconsin houses.

I do for the persons that I represent a similar service what the packer buyer on a salary at Chicago does for his employer. Practically all of my business is for the packers of the country. I have nothing to do with producers or raisers of hogs. I have never had a complaint from packers that I represent in Chicago, but some years ago we used to buy them for $5.00 a car and several of them told me they didn't want them bought so cheap, that they didn't [fol. 883] think I was getting sufficient for my services, and one fellow when I bought them for $5.00, insisted that I charge him $8.00. He said: "I don't expect you to perform that service and perform it honestly for $5.00, and I want you to charge me $8.00." Since we have been charging $10.00, I have never had any one of them complain about the charge or intimate that our charge was exorbitant. All of our charges are borne by the packing industry.

Redirect examination:

The time that the incident occurred when my customer wanted me to charge $8.00 was twenty years ago or more. Mr. Klinck of Buffalo told me to charge him $8.00 and Mr. Niles at Boston told me that $5.00 was too small an amount. He said: "You are not being properly compensated for your work and the amount of work that you do." They came around here and watched the way we worked and the hours we put in waiting until the cars were loaded and all that sort of thing at night, and were out here in the morning at six or six thirty to give them any information that might come up. That, since, has become the Hy-Grade Packing Co. It is now a corporation. I have actually personally sold hogs in which I trade at times.

"Q. Is there any difference in the problem of a man when he is acting as a salesman and when he is acting as a buyer? [fol. 884] A. Just how do you mean that?

Q. Well, is there any difference in the work required of a salesman as compared with the work required of a buyer? Just what is the difference? Can a man sell as easily as he can buy, or buy as easily as he can sell?

A. That is a hard question to answer; it depends on market conditions.

Q. Now will you explain that?

A. When the conditions, in other words, when the market is strong, the salesman's work becomes easier and he can extend his time letting loose of the hogs more than he can if the conditions are not strong, and then a buyer the same way, just the reverse.

Q. Just what do you mean by extending time for letting loose?

A. Extending time in which to sell the hogs. You understand that a salesman will ask you more than he expects to get, and then the buyer bids him. Well, he might wait too long. Somebody else might sell that buyer all he wants or several fellows might sell him all he wants, and [fol. 885] that salesman, if the market weakens one bit, he won't be able to get back to that bid, while if the conditions at the market are strong, the conditions are just the reverse.

Q. Do you think, then, that the buyer has an easier time when the salesman is having his worst time, and vice versa?

A. It just depends on conditions.

The Witness: The salesman has more responsibility than the buyer in this respect. The salesman, if he performs his duty like he should, he should be out there watching to see that his hogs come up to him in proper shape, that they are handled properly, then he has got, as I see it, I am not an expert on selling hogs, understand, but as I see it, he has got that country customer to please, and many times I suppose those fellows over-rate their hogs. I know they do. They have come back kicking to me that I have bought them too cheap when I have given them a strong market price. The farmers kick, the shippers kick, and really [fol. 886] the salesman has more to contend with than the buyer for that reason: That—this is just my view—I am not saying this as an expert,—but, a buyer has a better

posted class of men to deal with and a good many of those fellows in the country over-estimate the quality of their stuff and frequently commission men have come to me with kicks that were wholly unjust in my way of thinking. The men have made a terrific kick about the sale that he made perhaps to me and wanted to know what my version of it was. He has got to watch his fill and all those sorts of things that, of course, we watch on the other side too, but we have got a different class of people to do business with."

Our customers check up on the quality of service we render and advise us as to whether we bought them about right. We get reports from most all purchasers. We request that information as a rule. We request them to give us how the stuff killed out, if there is any bruised stuff, what percentage of yield, we want to know that for several reasons. It helps us in making future purchases.

With reference to communicating that information to [fol. 887] the salesman, we do like they do in the East. We let him know the bad part of it, and the good part we don't let him know because it might hurt us in making future purchases. If a certain man's hogs kill out extraordinarily good, we are not going to tell that salesman. He is going to use that to raise the price on us the next time. We would be hurting ourselves if we did that. We give out as little information as possible, in other words. We endeavor to buy them as low as we can in making purchases.

Cross-examination:

We don't give the salesman any information that will make his job any easier because he would use it against us. We are out there to get what we can for our customer as cheap as we can. We give him the bad news. The good news we keep to ourselves.

Mr. John J. Bachmann, a witness called by the Government, testified as follows:

Direct examination:

I reside in Washington, D. C. Chief Accountant, Packers and Stockyards Division, Bureau of Animal Industry,

Department of Agriculture. I have been an accountant for that division for four and one-half years.

I am a college graduate, took four years graduate work, one in philosophy and medicine, one in law and two in [fol. 888] accounting. St. Thomas College of St. Paul; St. Paul Seminary; St. Paul College of Law and La Salle Extension University. I taught accounting and other business subjects in three different schools in the Twin Cities for a period of six years and was Dean of the School of Accounting in one of those schools for a period of two and a half years. For practical experience I first went to work for the St. Paul Gas Light Company in the Accounting Division in 1916. I was with them for about six months. I then went to work in the accounting department of the St. Paul Water Department. I was in that department for a year and a half as assistant to the chief accountant, spending a part of my time in the Army, and came back and went into public practice as an accountant until 1920, when I went to work for Bishop-Brissman & Company, certified public accountants, having offices in a number of different cities in the Northwest territory. I was with them until 1924 when I received my own certificate and went to practice on my own account. During my experience in public accounting or during the period that I spent in public accounting, I made supervised audits, some of the larger ones being the Bank of North Dakota, State Mill of North Dakota, other projects in that same State, some of the larger municipalities in the State of Minnesota, both the City Water Department and Light Depart- [fol. 889] ment, the Mayo Clinic at Rochester, the Kahler Corporation at Rochester, other large industrial concerns in the territory. I was chief accountant for the City of St. Paul for two and a half years, acting in an advisory capacity, to the counsel of that city on all matters of finance and accounting, acted as auditor for the State of Minnesota for a period of eight years, covering a period of eight years. Also made a statistical analysis of cost of handling of about 55 to 60 different lines of commodities for the General Electric Company, covering five branches, one in St. Paul, one in Minneapolis, one in Boston, one in New Orleans, and one on the Pacific Coast. That study was similar to the one made here, but was made for a different purpose, the purpose being the adjustment of trade dis-

count and other questions pertaining to the same nature between manufacturers and jobbers of electrical supply lines. Made and supervised audits in numerous other concerns in and about the territory of the Twin Cities. Since coming with the Packers and Stockyards Division, I have been engaged on stockyards audits and rate cases at Nashville, Tennessee, St. Louis, Missouri, Kansas City, Missouri, Denver, Colorado, St. Joe, Missouri, Omaha, Nebraska, Sioux City, Iowa, and on commission rate cases at St. Louis, Missouri, Kansas City, Missouri, Denver, Colorado, St. Joe, Missouri, St. Paul, Minnesota and Chicago, [fol. 890] Illinois. And by St. Louis, Missouri, I mean the National Stock Yards at East St. Louis, Illinois. I have also, in that period of time, been engaged in auditing Seed Loan Division for the Department of Agriculture in Memphis, Tennessee, and in construkting a system of accounts for the Crop Control Division, covering the cities of Washington, D. C. Minneapolis, Grand Forks, St. Louis, Dallas, Texas and Memphis, Tennessee. I hold a degree from my school and also the degree of Certified Public Accountant from Minnesota, and have qualified for membership in the American Institute of Accountants, the Minnesota Society of Certified Public Accountants, the American Association of University Instructors in Accounting, and the National Association of Cost Accountants.

The nature of my duties when in the Washington office, is general supervision of all accounting matters for the Packers and Stockyards Division, dealing with rate hearings and with the gathering of statistics pertaining to the livestock industry.

I have made or caused to have made under my direction an audit of the various market agencies, respondents in the present case and doing business on the Chicago Stockyards.

As to the time which was required for the preparation [fol. 891] of the work done, I believe Mr. Svoboda and I came to Chicago some time about the middle of September, 1932, and from then on our assistants were delegated to this work, and they arrived subsequent to that time in ones and twos, and some times possibly more than that would arrive at some date subsequent to September 15. The people on this audit range from high grade clerks to senior accountants. I was not constantly in Chicago during

the preparation of these reports and audits. I was in Chicago for just a short period of time in September, returned again in November, early in November, and remained until about the middle of December, returned again Christmas Eve, and was here until the early part of January, returned again in February and remained here until the completion of the work, some time shortly after the middle of March. Although out of the city of Chicago, I was in general supervision of the work at that time. Whenever any questions arose which presented difficulty to the accountant in immediate charge, and which were not covered by general instructions which had been issued, the matters were taken up with me by mail, and the decision was left to me to make, and I, of course, received at all times, while I was away, progress reports which covered not only the progress but also any comments on problems which presented themselves to those who were working on the job and if it required any action on my part, I would take such action.

[fol. 892] By the term "instructions" I refer to an exhibit that has already been introduced as a Government Exhibit.

As a result of the work which my assistants and I have prepared, I am now prepared to present various papers which we will call exhibits.

I will take, first, what we call the statistical study of operations for the commission firms who are respondents in this case, Government Exhibit No. 49.

A copy of all sheets in this exhibit, except those covering the two cooperatives, were given to the accountant representing the Exchange members in March of this year. The cooperatives were given the sheets which applied to them shortly thereafter. A copy of the order buyers' cost study was given to the secretary of that Exchange about the first of April, this year, and I think a copy of the commission men's cost study or statistical study has been made available to Mr. O'Bryan since we have been here, and I think also a copy of the order buyers' cost study has been made available to Mr. Boyd since being here.

Government Exhibit No. 49 is a statistical study of the unit operations of the commission firms who are respondents in this case. When I use the term "statistical study of unit income and cost," I mean this: That the income and

[fol. 893] the costs are classified as closely as possible in a uniform way and reduced to a unit basis. In making a study of that kind, it is apparent that we must first then have units which should be as comparable as possible, and that the income and the cost of all firms should be made to correspond to a classification insofar as it is possible to make them correspond. Now, this study does not attempt to determine nor did we attempt to determine what reasonable costs are or what reasonable income is, but we took the income which we found on the books, we took the costs which we found on the books, and we took the volume that we determined from the records of the various companies and made some adjustments. However, we did not, as I stated heretofore, attempt to derive from those figures what reasonable income nor what reasonable costs are.

These adjustments are included in this study and I will discuss them when we come to that particular part of the study.

I wish also to make this clear, that this study is a tentative study and that the adjustments therein are tentative because we in the accounting division of the Packers and Stockyards Administration have nothing to say as to what final determination should be made by way of adjustments of costs or income, but we have used our judgment in trying to make those adjustments conform with the decision of [fol. 894] the Court in the Omaha case, and with decisions of the Secretary made in cases heretofore. Final adjudication, of course, on all of these matters is, as we view it, up to the Secretary. Also, it is up to him the question as to whether or not the methods of cost which we have used are sound or whether or not they are to be modified, in the light of all the testimony which is to be presented in this case. The form of the study has been drawn up to give the Secretary whatever information we could gather which will assist him in arriving at reasonable costs and in drawing up this form; we had in mind the Omaha case and the orders which have been issued by the Secretary on other commission rate cases since that time.

Specifically referring to the exhibit, the first part of it, of course, contains a letter of transmittal and an index of the firms arranged alphabetically and another index arranged numerically. The next contains an index of the various statements which are included in the study itself;

and on page 1, numbered page 1, will be found the auditors and tabulators who were assigned to the various market agencies covering all firms and all employees who may have at one time or another been engaged in drawing off the information from the particular firm's books and records. That list of auditors and tabulators covers pages 1 to 6. The next subject in the study that I will discuss is [fol. 895] the question of units. Being a unit study, we must determine the number of units and the kind of units we are going to use in making the study. The units which readily present themselves in the commission business are cars, decks and head. Now, we find that some of the receipts do not reach the market in carlots. We find that there are single deck lots and double deck lots. The first question that arises then is how we are going to reduce those receipts which do not come to the market in carlots and deck lots to a carlot equivalent or a deck lot equivalent. There are a number of ways in which such a conversion can be made. We could use the market average as used by the stockyard company. We could use the single deck equivalent for each firm separately, or for all firms averaged, or we could use double deck lot experience for each firm separately, or all firms averaged.

Now, the letter of transmittal indicates how the receipts other than carlot were reduced to an equivalent carlot, and I will read some of that letter of transmittal: "The measure used in converting receipts other than rail to an equivalent car unit was the approximate single deck experience of each separate firm for straight rail consignments applied to the species hogs and sheep. The car units so determined have been employed throughout the study. [fol. 896] There is included, however, a second cost determination for the species hogs and sheep, in which has been applied as the unit the same equivalent receipts converted on a basis of approximate single and double deck straight rail experience." These calculations are shown on pages 43 and 48. To make that more clear, we used for the study as a whole the approximate single deck carlot experience of all firms separately, that is, each firm's experience was applied to that firm's receipts coming other than carlot.

In addition to that, there was made a separate calculation for the species hogs and sheep for each firm separately, a unit study of costs, in which the units used for

receipts other than rail were reduced to a carlot basis on the experience of each firm separately, that experience being single and double deck straight rail experience.

The volume pages in this study run from pages 184 to 240 inclusive.

The next section is the income section. That is covered from pages 133 to 183. It shows the recapitulation of the selling and buying commissions by species, by mode, reduced to a unit basis.

I will next take up the adjustments which have been made between the blue audits and this study. Those ad- [fol. 897] justments will be found from page 49 to page 60. Reference to page 49 will show in the last column to the right the net profit per audits, in other words, the net profit or loss which is shown in the blue audits heretofore introduced as Government Exhibit 15. In the middle of page 49 will be found two columns headed "Per Cost Study," "Net Per Cost Study" that represents the net gain or the net loss of the same firms after the adjustments which we made have been taken into consideration. The adjustments are shown on the same page under the heading of eliminations and additions, three columns, one of which covers the income eliminations, the next covers the expense eliminations and the third covers the expense additions. In other words, between the audits, Government Exhibit 15 and this cost study, there were adjustments made which are represented in total by the three columns "Eliminations and Additions" and each one of those three columns is covered by other statements shown herein which will give the details as to the income and expense adjustments.

The first eight columns from the left on page 49 will show the total amount of income and expenses which were considered in this study in arriving at a unit basis.

To take up the first income eliminations, which will be found on pages 52 to 54, the first item of income eliminations is country commissions, which includes commissions which the respondents received buying or selling [fol. 898] livestock in the country which did not come to the market. The reason that that is eliminated is that according to my understanding, it is not subject to Government regulation and not being subject to Government regulation, we have eliminated it from our unit determination.

The next column "Commission and Traders' Clearance Charges", those charges are financing charges and being financing charges, and as financing charges according to my understanding are not the subject of regulation in this proceeding, we have also eliminated that particular part of the income. The next column "Interest and Collection Income", a separate allowance has been made in this study for interest income on the fixed capital used in the commission business. There has, in addition to that, been allowed a fund for working capital purposes on which, according to my understanding, an interest allowance is to be made which is to be carried into the rates. There has been in this study no allowance made for the buying and selling of livestock, that is, the financing of the buying and selling of livestock, and for that reason, both the income from interest and collection charges and the expense of interest and collection have been eliminated.

The next column covers Miscellaneous Income Eliminations. The nature of the items shown under that heading [fol. 899] are, in general, as follows: Insurance dividends on the lives of certain officers of the company, income from hog futures, sale of capital assets, profit derived from that financing service, farm income, any income derived from sources which are not strictly derived from the purchase and sale of livestock. Commission on Loan Contracts is another item included in that column, and those general classes will cover about all of the items shown under the heading of Miscellaneous Income Eliminations which total $2,829.05. The next statement is the expense eliminations shown on pages 55 to 57. The first two columns from the left cover the elimination of salaries for clearance and loan business, insofar as that business is not strictly essential to and has nothing to do with the actual selling and buying of livestock on the market, but is extraneous to that selling and buying. Any expenses which have to do with the handling of such clearance and loan business has been eliminated. The amount of such elimination is shown for each firm separately and for all firms combined in the first and second columns of pages 55 and 57. The third column from the left, "Depreciation Auto", the fourth column, "Depreciation Furniture and Fixtures", the tenth column [fol. 900] "Depreciation of Stores". The items shown under the headings indicated are adjustments. What I

mean by that is this: in those cases where the company itself had set up on its book a certain amount for depreciation for those particular assets. We made an entirely new calculation for depreciation, which will be explained hereafter, and, in so far as that the amount on the books should not correspond with the amount which we determined in our calculation, adjustment was necessary to make the amount shown on the books conform with our calculation. The next column, which is the fifth from the left on page 56 to 57 is Charity and Donations. That covers all the donations made by these various firms for charitable purposes. The reason for the elimination is this: that if these firms desire and feel it advisable to make charitable donations, that they themselves should make them and they should not attempt or be permitted to pass them on to the rate payer.

If charity and donations is allowed as a reasonable expense and is carried into the rates, the effect is apparent. That is, that the shipper pays the donation and not the firm who made the decision and made the donation. The next column is "Bad Debts for Loan". All expenses or income which has been derived from the loan business, have, for the purpose of this study, been eliminated as not being subject to regulation and not being a part of the commission [fol. 901] business, as such. It is extraneous to the commission business.

The next column, "Personal Life Insurance," indicates the reason why it was eliminated. It is life insurance on the lives of certain of the officers of certain of the companies and being a personal expense item, it should not, in our opinion, be carried into the rates. We did not go into the feature whether the insurance is payable to the beneficiaries of the insured or to the firm itself, but from previous investigations I have made in similar situations, in some cases, they are payable to the firm; in some cases they are payable to other members of the firm; in some cases, are not payable either to the firm or to a member of the firm, but to a personal beneficiary.

I speak not for the Department nor for the Secretary, but purely from my own viewpoint. In my statement that I was guided by the Omaha decision and subsequent orders of the Secretary, I had this in mind: I have, of course, read those decisions, and have tried to outline the data contained in this study approximately in line with the information

which was used in those decisions and have tried to conform the information here to those decisions as much as I could.

The next column, "Interest and Exchange Bank Service", it is the expense side of the same item which I dis- [fol. 902] cussed under the Elimination of Income, and the reason for the elimination of the expense is the same as that given for the Elimination of the Income.

The next column is headed "Miscellaneous". The nature of the expenses classified under the heading of Miscellaneous, are, in general, loan expenses, loan, travel, club dues, membership transfer fees, legal expenses on account of loans, Exchange fines, financing service, Investment items, write-off of good will, branch office, depreciation on memberships, organization expense, audit for rate hearing, two items shown under that heading, and two items covering firms not in item 100 for that purpose.

The next column, depreciation horses, depreciation on horses has been explained heretofore. Exchange dues does not cover all Exchange dues which are paid into the Exchange. A part of those Exchange dues have been allowed under the heading of "Administrative and General Expenses". The portion which is eliminated on pages 55 to 57 covers the assessment which was made in 1932 for the conduct of the rate hearing. My position on that is this: I believe that an item of that kind should not be allowed in total for the year that it is incurred, should be amortized over a period of time. In at least one other decision that the Secretary made heretofore, he has overruled me in my [fol. 903] contention, and I have, therefore, set the item out as an elimination until a decision of the Secretary in that particular respect is changed if that may occur in the future.

The next column, "Investment" in some cases, we found where some of the companies had charged the purchases of furniture and fixtures as an expense for the year. Those items being in the nature of capital investment were eliminated as an expense item. Outside operations, expenses, cover the operation of farms, and I think in one or two cases possibly, real estate which is no part of the commission business as such. The next three columns "Furniture and Fixtures", "Insurance", "Mortgage and Theft Insurance", "Workmen's Total Compensation Insurance", rep-

resents adjustments, and what I mean by that is this: that in some cases some of the companies carry insurance in the nature of fire insurance, on furniture and fixtures, or mortgage and theft insurance, or workmen's compensation insurance. We recalculated that insurance on the basis rates furnished to us by the Secretary of the Exchange, which he had received from an insurance company. The letter was signed by Mr. J. W. Werner, Assistant Manager of the Hartford Fire Insurance Company, Chicago, Illinois. The letter of Mr. Werner covers the item of Workmen's Compensation Insurance and Public Liability Insurance. We made no adjustment for the public liability insurance.

Last night when we stopped, we were discussing the insurance adjustment shown on page 55 of Exhibit 49. Ad-
[fol. 904] justments for furniture and fixtures, mortgage and theft insurance, and compensation insurance were made in all cases where an increased amount was necessary, or where the amount shown on the books was greater than the recalculation showed that it should be. Now, where the amount was greater on the books than the calculation showed that it should be, the reason for that was mainly over-lapping, that is, the policy would run from somewhere from a date in the calendar year to some date in the next calendar year and would not be on the calendar—the payment would not be made on a calendar year basis. Our calculation here is made on a calendar year basis. The first adjustment is Furniture and Fixture insurance. We accepted the rate shown in the letter which I mentioned yesterday and applied that rate on an 80% co-insurance basis to the sound value of the fixed assets as determined by Mr. Henrici in his appraisal. The next item, Mortgage and Theft Insurance, was adjusted on the basis of the rate specified in Mr. Werner's letter, effective from July 1st, 1932, that is, 7½ cents. All the head were reduced to a standard carlot basis as set out in the letter of Mr. Werner. The Workmen's Compensation Insurance, the rate used for adjustment was the rate specified by Mr. Werner, effective August 1st, 1932. That is 9¢ per $100 of payroll for office workers, and $1.34 for $100 of payroll for yard workers applied to the non-owner's salary for the year 1932. I believe that completes the discussion of the elimination of expenses.

[fol. 905] The next will be expense addition shown on page- 58, 59, and 60, for each firm separately. The first two columns from the left, salaries, loan business, and so forth, owners and non-owners, represent items of profit which were substituted or included as owners' compensation where no other owners' compensation was shown on these blue audits. I wish to make this statement about owners' salaries. We do not in any way attempt to set out what owners' compensation per unit or in total should be. Wherever we found that the firm had placed an owner on a salary or on a drawing account basis, we used that amount as the owners' compensation. Where no owners' compensation was shown on the books, we put in the amount of profit in lieu of salary or drawing account. Where no profit nor salary was shown for an owner, there was not included any compensation for that owner, although on the questionnaires the owners were shown as rendering service. As I stated before, we in no way attempt to set out what the fair compensation of an owner should be, and I appreciate fully that with respect to the owner's income, this study may be incomplete insofar as there may be individuals who have no salary or profit assigned to them as compensation for whatever service they may have rendered.

The next three columns take up Depreciation of Auto, Depreciation of Furniture and Fixtures, Depreciation of [fol. 906] Horses. In numerous cases the firms did not take on their books an allowance for depreciation covering those assets. We recalculated the depreciation, using as a base Mr. Henrici's appraisal, and taking from that the reproduction new values as the base and using as the rate or the life of the assets, the following years: for office furniture and equipment, ten years; office fixtures, 20 years; automobile, 4 years; horses and saddle, 8 years; yard buildings, 20 years. That recalculation will be found on pages 97 to 99. That represents a calculation under the straight line method of calculation. Studies which I have made in the past on the question of depreciation have led me to the conclusion that the straight line method is in general not very close in conformity with actual depreciation sustained. For that reason, and for the further reason that I believe that the sinking fund method comes closer to the actual facts as to the actual depreciation sustained, we have adjusted the straight line calculation to conform to a sinking

fund calculation as shown on pages 100 to 102, and the adjustments which were made for depreciation in this study are the difference between the amounts shown on the books and the sinking fund calculation, and there was either an increase in the depreciation allowance or a decrease in the depreciation allowance for the amount of difference between the depreciation shown on the books and taken into this study. The amount of such increase or decrease would of course, be shown in the adjustment sheets which I have been discussing. The same comment which was made for [fol. 907] depreciation on auto, furniture and fixtures, and horses will apply for the second last column from the right "depreciation, yard buildings".

The next three columns cover the insurance adjustment for furniture and fixtures, mortgage and theft and workmen's compensation. These represent the additions made to expense which are the direct offset of the same items discussed under expense eliminations heretofore. That covers the total adjustments made for the purposes of this cost study. After the adjustments have been made, the next step is to reclassify and recapitulate the expenses by functions, and we divide expenses first into salary expenses and non-salary expenses. The salary expense recap will be found on pages 61 to 63, and the details will be found in the pages following up to and including page 78. The division of salaries into the various functions or into the various services which were performed by the separate individuals was effected through a set of statements which we will call the salary questionnaire. This salary questionnaire is a joint piece of work, and when I say that, I mean this: a part of the work was done by ourselves and a part of the work was done by the accountant representing the Respondents who are members of the Exchange and who also represented the Producers Commission Company.

I will take the set of sheets covering the first firm and will describe the particular part of the work which was done [fol. 908] by us and the part of the work which was done by Mr. Mudd. The second sheet of Firm No. 1 shows the names of the various employees and number designation, whether they are owners or employees, what their main duties are, the time worked, the compensation shown on the blue audits which that individual received, and the adjust-

ment which was made for owners for salaries by way of profits where no actual salary allowance or withdrawal allowance had been shown on the blue audits. All of that work was done by us. In addition to that, after Mr. Mudd had placed upon these sheets the distribution of the time devoted to the various services by each individual, we also made the distribution of the salaries in accordance with the time distribution and we made the recap of the salary distribution by functions. The remainder of the work on these questionnaires was done by Mr. Mudd and his assistants. The conferences held with the owners of the various firms or the representatives of the various firms during which the distribution of time was determined was done entirely by Mr. Mudd and we accepted it as correct. This questionnaire, as I have stated, is the basis for the distribution of all owners' and non-owners' salaries and wages to functions or services rendered.

I have marked these questionnaires, Government Exhibit No. 50 for identification.

The recapitulation of expenses other than salaries are shown from pages 79 to 93. The functional designation of [fol. 909] these expenses is business getting and maintaining expense, office expense, yarding expense, administrative and general expenses, and risk items. The various kinds and classes of expenses which are included under these main designations will be shown or will be found on those pages. There are not included in the unit determination of costs interest on estimated capital requirements. However, I have always maintained the position that in determining reasonable costs and allowance for interest on estimated capital, requirements should be made and for that reason I have made a calculation of what in my opinion should be the allowance for that item, which will be found on pages 94 to 95. The first column shows the sound value of the depreciable assets as taken from Mr. Henrici's appraisal and covers all depreciable assets as shown in Mr. Henrici's exhibit. The next item, that is, cash working allowance, represents approximately 1/12 of the total expenses of the firm as recapped on pages 49 to 51. That is the column headed "Total expense per cost study". That cash working allowance covers only that part of the cash which is necessary for the operations of the business without the factor of financing the selling and buying of live-

stock. In other words, it is intended to cover only expenses, the necessary expenses of carrying on the business and I feel that one month advance allowance in general is sufficient. The next column "Other assets deferred", and so [fol. 910] on, represents supplies inventories of various kinds, that is stationery, and the various supplies that are used in the yards for driving purposes. The next column, "Live Stock Exchange Memberships", are included at $750 a membership. The interest rate used here for the amount which should be allowed in gross is seven percent and that seven percent is applied to the total estimated requirements. The amount of allowance is determined in that way and the number of cars is divided into the total allowance to get the per car estimated allowance.

The next subject is the distribution of expenses to species. The distribution, as made, will be found on pages 106 to 132. The expenses were allocated to species directly wherever possible. What I mean by that is this: where it could be clearly shown that an expense was incurred in handling one particular species of livestock, the expense was applied directly to the handling of that particular species. As an example, horse and saddle expense is used in the cattle alley or the cattle yards only, and the amount of that expense was all applied to the handling of the species of cattle and calves, and that practice, in so far as we were concerned, was followed throughout; wherever an item was clearly applicable to a particular species it was so allocated. That took care of somewhat over 60 percent of the expenses. For the remainder, we could not clearly and directly apply that amount to a particular species and some method of indirect allocation had to be provided. The first expense for [fol. 911] which such a method of indirect allocation had to be provided was the office and administrative salaries.

For that particular expense, the basis for distribution of indirect expenses was number of account sales, number of owners and number of drafts by species, which analysis by species was taken from the account sales. The next expense for which an indirect method of distribution had to be provided, a part of it was business getting and maintaining salaries. The method adopted was the commissions less the commissions which had been received for seconds. I mean gross commissions.

The next expense, business-getting and maintaining expense, in distinction to salaries, the same method was used for the non-salary expense as was used for the salary expense. Non-salary expense, the same basis was used for that as was used for office salaries. Yarding expense, non-salary, the basis used for distribution of the indirect portion was drafts. Administration and general expenses, non-salary, basis for distribution of that to species was account sales and purchase, owners and drafts. Risk items, the indirect portion of that expense was allocated to species on the basis of head times average value for the year, as taken from the Drovers Journal. The average value used was $40 for cattle and calves, $12 for hogs and $6 for sheep. On pages 103, 104 and 105 will be found a calculation which has [fol. 912] not been described, which is a test of what proportion of the gross income is spent for business-getting and maintaining. The gross income column there shows the amount of gross income with the seconds eliminated, that is, with the income derived from seconds eliminated. The reason that is put in here is because the question has been frequently asked me what percent of the gross income do these various firms spend for getting business, and to answer that question, this calculation has been made. After the distribution of all expenses has been made to species, they were then brought together and the unit calculation was made for them. This unit calculation will be found from page 16 to page 48. On pages 16, 17 and 18, it shows the total expenses which refers to the total taken into this study only. It covers both salary and non-salary expenses. Pages 19, 20 and 21 for the species cattle and calves takes in the unit calculation for salaries, and 22, 23 and 24 take in the unit calculation for non-salaries. The same procedure has been followed for the other species, the unit calculation of income and cost is then brought together and compared on pages 7 to 15. The reason for those comparisons is this: to determine if possible, whether the tariff has been properly balanced. What I mean, by that, is this: if that comparison should show that ¾ of the firms make a profit, for instance, on cattle and calves, and if the comparison should show that ¾ of the firms lose money on hogs, it would be an indication that the tariff is not prop- [fol. 913] erly balanced between species, and it is for that purpose only that comparison has been included.

The next section, which has not been discussed, covers pages 241 to 279. It shows the recapitulation of account sales and purchases, owners, drafts, for the species cattle, calves, hogs and sheep by firms, analyzed in detail and taken from the blue audits. On the next sheets, 280 to 282, is a calculation showing the volume handled on an annual basis by the various firms for the yard functions only. The number of cars handled by the firms is shown and the number of salesmen and buyers and yardmen reduced to an annual basis. What I mean, by that, is this: if an individual worked only a half a year, he was included under the head of the number of salesmen and buyers as a 50 per cent man, that is giving 50 percent of his time to that particular function. If he spent three months of the year, he was classified as a 25 percent man, that is, the equivalent of one man for a quarter of a year. The same was done for yardmen, and the comparison between the firms is evident on the face of the statement.

The next sheet, 283 to 286, is a comparison of salaries for non-owners, showing from the highest to the lowest the salaries which the non-owners received for selling and buying the various species. It shows also, on page 286, a comparison of salaries for non-owners of general and office managers. The remaining sheets in this study, from pages 287 to 550, contain a sheet for most of the firms for each species [fol. 914] handled by that concern. I say "most of the firms" because in a few instances a sheet may not be shown for a firm which had either a very small volume or all of its volume was received under one mode of arrival. These sheets attempt to take the species cost of each firm and break that species cost down to a cost differentiated for modes of arrival.

I will describe 336, and that description will apply to all of the sheets following, and pages 287 to 335, inclusive. There is shown first on the top of the page the volume handled by the particular firm for the particular species indicated in the heading. The next section shows the number of drafts, owners and account sales and purchases, analyzed by mode of arrival for the particular species, which information was taken from the sheets heretofore described. The same comment applies to the item "Income Gross" that was taken from the income section of this study as described heretofore, and divided by mode of arrival.

The per car calculation, which is the next line, is the division of the total number of cars into gross income by mode of arrival. Now, the question arose in our minds as to this: is the differential, as in effect in the tariff now in use, correct, and if not correct, how does it vary with what it should be? With that in mind, we had to test as best we could what the distribution of the cost would be, if the same profit were derived from each mode of arrival. To make that test, we took the per car income for the total [fol. 915] column. That is on this particular sheet $20.50, and determined a ratio against the cost per car of $21.45, which cost per car has heretofore been determined. The ratio of the incomes to the cost is then applied to each per car income amount. For instance, the ratio of $21.45 to $20.50 is about 21 to 20. If we apply the ratio of 21 to 20 to each of the income amounts, we get the corresponding cost amounts; cost of $20.50, income per car, and the $21.45 cost per car, are comparable figures, being both composites. This is only for the purpose of testing what the existing differential is if it had been constructed to give to each mode of arrival the same percentage of profit as any other mode of arrival.

Now, having made that test, the next question is: is that differential correct, and, to find out whether or not it is correct, we have to break down all of the composite costs into costs by mode of arrival. That is accomplished in the following way: in the middle of page 336 will be found 14 lines, designated 1 to 14, showing in total the expenses allocated to cattle and calves by functions. The total expenses are then broken down to the modes of arrival in the following way: For selling, the total selling cost $9,759.34 is allocated to mode of arrival on the basis of head plus drafts. The same method was used for buying. The yarding hogs, $6,386.82 was broken to mode of arrival on the basis of drafts. Office and administration salaries was [fol. 916] broken to mode of arrival on the basis of account sales, owners and drafts. Soliciting salaries on the basis of gross commissions with the seconds out; non-salary expenses, business-getting and maintaining, on the same basis as salaries for soliciting. Non-salary office expenses on the same basis as salaries for officers. Yarding non-salary expenses on the same basis as yard salaries. Administrative and general, non-salary expenses, on the same basis as office

and administrative salaries. Risk items on the basis of head. Interest on capital on the basis of cars.

The next step is to calculate the unit cost, which is done by dividing the number of cars into the distributed expenses and the lines in the bottom section of the page corresponds with the lines in the middle section of the page, which shows the unit calculation by mode of arrival and by functions. When we compare the cost per unit, as determined in this way, with the test cost made up above in the line cost per car, cattle and calves, we find that the differential as it exists in the present tariff under this method of calculation is in some cases fair and, in our opinion, in other cases is not fair. For instance, take mixed rail No. 2, plural ownership, the income per car is $26.01. Under the differential test of the existing tariff, the cost of that car would be $27.21. However, our differential studies show that the approximate cost of handling cars for that particular mode of arrival is $44.40 and the comparison can be made in that [fol. 917] way throughout for all firms and for all species. That is all I have on this exhibit.

My next proposed Exhibit is No. 52. This is the statistical study for the order buyers and follows very closely the outline which I have given on the commission men's study. It follows very closely the same form and the same principle.

The data which underlies the study made for 1931 was prepared jointly by the firms who are registered as commission firms on this market, and our own employees. That is, the commission firms took off the statistics from their books and records along with the assistance of our own employees. The analysis of the ~~income and expenses~~ as shown on the profit and loss statement for 1931 was taken from the annual reports which those firms had filed with the Bureau, and were further analyzed by our accountants to get the necessary information to make, not an exact study, but a study of sufficient detail to give the conferees some substantial information upon which the discussion as to the adjustment of the rate question could be had. There was no study made of the order buyers in any way at that time. There was no differential study made for any firm in 1931 and some of the statements which were produced for the 1932 study were not produced for the 1931 study. What we did prepare was the analysis of volume, the analy-

sis of commission, the analysis of expenses, and a unit calculation up to the point of composite costs for all species. That is as far as we went for 1931.

[fol. 918] There is the statistical study itself, the questionnaire underlying that, and the work papers which underlie it, both the work papers which were used for analysis of the operations of the individual firms and the work papers underlying the study itself. There were no blue audits made for 1931. I have five copies of the statistical study, and of course there is only one set of the working sheets and there is only one questionnaire.

Proposed Exhibit No. 56 is the statistical study of operations covering the commission firms for the year 1931.

The next exhibit is marked Government Exhibit 57, and covers the salary questionnaire used in preparing the statistical study for the year 1931 covering the commission firms only.

Mr. James A. Strachan, a witness, called by the Government, testified as follows:

Direct examination:

I am a cattle salesman for Wood Bros. I am an employee. That is a market agency engaged in the commission business at the Chicago market. I have been with that firm five years, or six years this coming October. I own no interest in the firm. The firm is at present being run under [fol. 919] an estate, and has been since the death of Kay Wood, who died in October, five years ago. I am a cattle salesman for that firm.

I started in the Fall of 1912 as cattle driver for Swift & Co. I drove cattle for close to a year and was then given a position as weight taker on a calf-buying station. I carried on that capacity then a few months and was given an opportunity to buy calves. I bought calves possibly six months and was given an opportunity to buy cows. I bought cows for a very short period and was sent to St. Paul and there bought everything, calves, cows, bulls and steers.

All this time I was in the employ of Swift & Co. I was brought back from St. Paul and in the capacity of a steer salesman here in Chicago, then was put on various markets at times and off and on, returned to St. Paul, finally being

situated there as assistant head buyer until 1918 when I went into the Army. When I returned from the Army, I returned to Swift & Co. at Chicago as steer buyer on this market and was in that capacity until I left the packers and went into the commission business. That was in the year 1921, I believe. I have been in the commission business since.

I went into the commission business as an employee. I have never been engaged in the commission business on my own account. The administrator of the estate comes up and inquires as to how things are going on and so forth. [fol. 920] We all seem to know just what our individual duties are, and if we feel that two or three heads is better than one we confer. I believe everyone of the employees was with Wood Bros. before I came into their employ. I am the head steer salesman. We have an assistant steer salesman and we have one cow salesman. The cow salesman sells cows, calves and bulls, yearling heifers and sometimes yearling steers, if they are the proper weight for the butcher alley.

I have confidence in their ability to handle their own work like it should be handled. As to my assistant steer salesman, we don't have any particular division of work. We just go along in harmony and he sees what should be done, and he does it without being told, and I try to do likewise myself. We do not necessarily divide up the steers, one taking a certain proportion and the other taking the rest. We might possibly work on the same steers, but we would not sell without confiding in each other.

We usually try to handle the driving of cattle with our own men. We employ yardmen in the cattle alleys.

I would not say that it was the general practice, for me and the other two cattle salesmen, to confer each morning in regard to the price we are going to ask for cattle that day; we do it at times. We may go into a few of the cattle and consult each other as to what we think the possibilities of the market are, what perhaps these cattle may bring, and [fol. 921] the information to determine the prices that we will ask for steers on any given day, depends a good deal upon my own ability and judgment as to the value of the cattle and the situation of the market.

By situation of the market, I mean we may have had a large run on a Monday and another run might come along

on Tuesday of a pretty fair size, Monday's market perhaps is lower, and with a good run on Tuesday, you naturally figure that the market would not be any better. I do not judge that by the Chicago market alone, I think we have to keep pretty well posted on conditions in general. Salesmen should be pretty well posted on the hide markets and the offal credits of the animals, the conditions of that market, as well as the conditions of the beef market. As to whether that information is available to me each day, I have to dig it out myself. I do quite a bit of reading, try to keep posted in various manners.

We subscribe to papers from the various markets, particularly St. Paul, Sioux City and Omaha, daily market papers, which we usually receive the next morning after they are published. They come in on the afternoon mail and I usually look them over the afternoon they come in. They come in the following afternoon after publication. I do not necessarily receive information about hides and other by-products from those papers, but I do take papers that give me that information. One of the papers is the Chicago Journal of Commerce. I think that paper carries a full account of most everything that would be of interest [fol. 922] to one who wants to keep well posted.

None of our yardmen do any sorting. That is to say, in fitting the cattle for sale, they might bring over some cattle with a bull or two and some cows or calves with them and for the sake of the service that they would immediately take off; otherwise we do the sorting and fitting ourselves. They might sort as to whether they belong to the butcher alley or the steer alley. We three salesmen do all the sorting after we arrive in the yards, that is, other than that which I have mentioned. Our yardmen assist us in doing that. As to whether we frequently offer cattle for sale just as they arrive, a good deal of that depends upon our opinion as to what the markets might be that particular day and in which manner we could possibly net the shipper the most money. It happens that if possible, we will offer them one way and they may not be attractive and then we will sort them, and then throw them back together. I worked for the Northwestern Commission Co. before I came to this present firm.

I think I possibly write as many personal letters as anybody in this building.

I do not do any work in connection with the account sales, other than to see that the tickets are correctly marked. We have to write letters in sending back the account sale. I do for most of the cattle that I sell. We like to fully explain [fol. 923] market conditions to the shipper and his various kinds. I might sell some of his steers, the butcher salesman might sell his she-stock; in that letter I will drop a little line in regard to the steer market on his class, the butcher salesman would tell him in a letter also; and that letter accompanies the account sales. I write other letters to prospective customers. Some I know who have cattle on feed and want to be kept well informed. I keep in very close touch with them.

I would say that our firm sends out a market letter every two weeks, and we publish a monthly organ called "Wood Brothers Market Digest." The latter summarizes the market for the past month and the prospects for the future.

When I have lots of time, and get time to go through our files, we have a record of our customers, and in these files we keep a record of their shipments. I find sometimes from the file that we perhaps have not heard from a man for possibly two years, and then I write him a letter asking him what he has on feed, and how conditions are. I make trips to the country to look at livestock as frequently as I can, sometimes watching that the trips are profitable, if possible, as we find trips to the country rather expensive at times.

As to whether I consume all the time allowed me by the Exchange rules, it sometimes depends upon my convenience, if I am able to get away or not. Those trips are usually made at week-ends. I do not personally own an exchange [fol. 924] membership. I operate under one owned by the firm. When we make trips to the country that are not upon request, they are to try and get the business.

I could not give you a direct answer as to whether by and large there is any difference in the work involved in selling cattle arriving by rail as compared to those arriving by truck. It all depends upon the circumstances. We have at times cattle come in by truck as I said before, might not look as attractive as those that come off the rails; on the other hand, we have at times had cattle that come on the rails that possibly don't look as attractive as those which come in on the truck. Wood Bros. make very few loans on livestock. I might sponsor a loan or recommend a loan,

if I knew the character, ability and integrity of the man who is making the application. Of my own knowledge, I do not know of any loan that was ever made on anything that was bought otherwise than here. I believe there were a few loans a while back on some cattle that were bought in Nebraska, but our loan business is practically nil. As to whether my recommendation as a salesman brings business to the firm, I imagine at times a man that has a great deal of confidence in you; in fact, I think the commission business is still built up a good deal on individuality. I would say this relationship between the salesman and his customers is quite a personal one.

It is rather an unwritten law of commercial conduct that loans made by commission firms on cattle, that the cattle [fol. 925] will be sold by that firm. When a loan is made we naturally anticipate that the borrower will sell through our firm.

In determining the policy with reference to the expenditures of the firm for any purpose such as soliciting, or business-getting, I might express an opinion. The two other cattle salesmen also make soliciting trips. My territory for making soliciting trips to the country, are not limited to any particular section or state. In Fall, we do receive some western cattle from Dakota and Montana principally. I think we have made two western trips in the last four years. The states comprising our trade territory for native business are Illinois, Iowa, Missouri, Indiana, Wisconsin, Montana, South Dakota, some from Wyoming, Nebraska, Kansas, Ohio, practically all states in the radius of the corn belt. Most of the steers from Ohio go east. We get a few at times, generally not very many. I have made soliciting trips to all the states which I named at one time or another in my experience. I possibly go to Iowa most frequently. Iowa is more or less logical territory for this market.

It has been my observation of late and I am of the opinion that there is a far greater percentage of cattle, hogs and sheep going to the western coast than comes to the east at the present time. They are moving to the west coast from points in Eastern Nebraska and I believe they have come as far east for livestock as spots in Iowa. I would not say [fol. 926] that that is recent, but it has been on the increase. It applies to all classes of livestock.

A good deal of feeders who handled lots of livestock in years past have been perhaps put out of the picture by financial distress. I think that is the general situation throughout the country. I believe the quota is far below its usual quota of livestock, due to bad seasons in crops which they have not been able to combat. Prices determine whether livestock comes to Chicago or goes elsewhere, to a certain extent. It would be if I were shipping.

It all depends on the supply and demand as to whether there is a tendency to maintain more or less definite relationship among the different markets. We may have a very light run here in Chicago and Omaha may have an exceptionally large run and prices in Omaha are very apt to be lower on that same day than they are here in Chicago. And the opposite might be true. The packers would put their orders where they could buy them the cheapest.

Livestock moves out of the river markets and other western markets to the Chicago Stockyards for sale. I have never seen any in my experience move from Chicago to those markets for sale. I find that other commission firms on the Chicago market solicit and appraise livestock from the same people I visit. I would imagine that possibly another concern may be corresponding with my customers or I with theirs. It is quite possible. I would not say that [fol. 927] my experience as a buyer has exactly qualified me to become a salesman. It possibly helped my knowledge of values. Of course, I had to turn from a bear to a bull, and I did that over night. It is not for me to say whether I did it successfully. I am always trying to get as good a price for livestock as other salesmen on the market. It is very seldom that we get two loads of cattle exactly the same where we could make that comparison.

You have to have the goods to sell cattle at the top.

As to what determines the number of cattle I can sell in a day, I don't know what you base that question on. If you will ask that question in another form, it might make it a little clearer to me. I don't quite understand it. I cannot answer it intelligently.

Mr. Dagger (continuing): Mr. Strachan, taking conditions as they exist on the Chicago market and as the business comes to your firm, keeping in mind the fact that there is a variation from day to day, how many cars of steers can you sell in a year's time?

Mr. O'Bryan: Now, just a minute, I object to the question. You mean in what year, 1932?

Mr. Dagger: Take 1932 or——

Mr. O'Bryan: I object to the question on the ground that the records of Wood Brothers is the best evidence of what Wood Bros. did for that year in answer to that question and that this witness at best could only give a guess as to what that performance was.

Mr. Dagger: Will you read the question, please?

(Whereupon the question was read.)

[fol. 928] Mr. Dagger: I am not asking the witness, Mr. Examiner, what he did. I am asking what his capacity is as a salesman.

Mr. O'Bryan: I submit that the question did not ask him that. The question asked him what he did.

Mr. Dagger: I submit the question says "what can you do" and "can" does not mean "did".

Mr. O'Bryan: All right.

Mr. Boyd: I submit that whether it says "can" or "did" it is just as objectionable. May I ask a question to test the witness' qualifications as a basis for an objection?

Mr. Dagger: Yes, you can ask a question.

Mr. Boyd: Do you know how many cattle you sold in 1932?

The Witness: No, sir.

Mr. Boyd: Do you know how many cattle any other salesman sold in 1932?

The Witness: No, sir.

Mr. Boyd: Then, I object to the question on that basis.

Mr. O'Bryan: Same objection. The witness' answer could only be a guess and that the records of the firm are the best evidence.

The Examiner: Objection overruled. If you can answer the question, Mr. Strachan, you may do so.

The Witness: I could not stipulate truthfully the exact number of head I sold or any of our salesmen sold. It would be impossible.

Mr. Dagger (continuing): How many could you sell if you had them to sell?

Mr. O'Bryan: I object to the question on the ground that it does not take into consideration any of the varying factors connected with the sale of cattle over a year's

time, as to whether markets were fast or slow, and it assumes the fact which this record shows is not true, that cattle all of one kind arrive at this market for sale. The record is clear that cattle arrive in various grades and [fol. 929] various weights and various types.

It assumes facts which are not on the record and does not assume all the facts which will be necessary to take into consideration in making a proper answer to the question and for that reason it is objectionable.

Mr. Boyd: Same objection.

Mr. Dagger: Mr. Examiner, we understand the same objection has been made and overruled, and we are at a loss to know why the same objection is permitted to be continually made in order to advise the witness what he shall do.

Mr. O'Bryan: I object to counsel's statement that the objection is made to advise the witness as to what he shall do. The objection is made because it is a proper objection and will be continued to be made upon the same ground.

Mr. Boyd: It seems to me, Mr. Examiner, that the mere fact that the Government continues to ask a question which we think is improper or which I may think is improper, and I object to it and state the reasons for the objection, that the fact that the Examiner overrules it, which is appealable to the Secretary, that the same objection might well be raised and overruled as many times as the question is asked.

Mr. O'Bryan: There is no way in the world of making a record in this case without objections specifically to the question each time it is asked.

Mr. Boyd: And particularly in view of the importance of the question.

Mr. Dagger: Is there a question on the record?

(Whereupon the question was read.)

The Examiner: Objection overruled. Is the question clear to you, Mr. Strachan?

The Witness: Pardon me?

The Examiner: Is the question clear to you?

The Witness: Do you want me to answer it?

[fol. 930] The Examiner: If you can answer it, yes sir.

The Witness: Will you read the question?

(Whereupon the question was re-read.)

Mr. O'Bryan: I understand that question refers to the previous question, in so far as it is a question regarding the number of steers which this witness could have sold, is that right?

Mr. Dagger: Of the class and kind that he handles, steers, yes sir.

The Witness: If you read that question again, please.

(Whereupon the question was read.)

Mr. O'Bryan: I think that the witness is at a loss regarding the question and——

The Witness: I fully understand it, I believe. I took an oath to tell the truth and that is utterly impossible.

Mr. Dagger (continuing): You could not even approximate it?

A. I have no idea.

Q. Is there any limit to the number you could sell?

A. There is a human limit to everything.

Q. Could you sell one car in a year's time?

A. Possibly.

Mr. Boyd: I object to that question—go ahead, he has answered it.

The Examiner: Objection overruled, to keep the record straight.

Mr. Dagger (continuing): Could you sell one thousand cars in a year?

Mr. O'Bryan: I object to that, if the Examiner please, because the witness has said it would be impossible for him to answer the question. You are now interrogating him as to whether he could sell one car or two cars or ten cars or one thousand cars, he has already answered the [fol. 931] question.

The Examiner: He has not answered that question, Mr. O'Bryan. He answered the question about whether he could sell one car but he has not answered the question whether or not he could sell one thousand cars.

Mr. O'Bryan: He has answered the question completely, as to how many he could sell. He said it would be impossible to tell. This is simply argumentative.

The Examiner: If the witness knows whether he can sell one thousand cars under the question as put, which goes back to the conditions as already discussed, the witness may answer.

Mr. Boyd: I want to raise the specific objection, it does not make any difference what the witness may answer as to whether he can sell one thousand cars or not, it is an unfair position to take, in the first place, to ask whether he can sell one thousand cars, when no other conditions surrounding the question assumes conditions that prevail at a market which is the largest in the world and having the greatest multiplicity of difficulties confronting the salesmen, and I think if the witness were to say "yes" or "no" that the effect of it would be the same because it would not be a test at all of the man's capacity; the witness having further stated that he does not know how many he sold during the year 1932. There is not any indication as to whether or not this question contemplates the witness answering what he could have done in the past or whether it projects itself into an unknown future.

The Examiner: Mr. Dagger, the question reads now, as I understand it, whether the witness could sell one thousand cars. Mr. Boyd's objection raises the point as to whether or not it is clear that the question contemplates some definite period, apparently, I suppose, whether it is 1932 or 1933. Will you state definitely what you have in mind in connection with one thousand cars, as to the year?

Mr. Dagger: I am asking this witness, Mr. Examiner, for his opinion based on the conditions as he has found them at the Chicago market. Naturally this question presupposes that he will consider conditions as he has found them in his recent experience in the last year or such period as [fol. 932] he considers a normal period to consider.

Mr. O'Bryan: If it is in regard to the conditions as he has found them, that is, the actual experience of the witness in selling steers, as he has acted as a steer salesman for Wood Bros., and the records of Wood Bros. are the best evidence of what this witness could or could not do.

The Examiner: Mr. O'Bryan, in these objections, it would seem to me you take the position that what a man does do is absolutely conclusive of what he can do. Do you take that position seriously?

Mr. O'Bryan: No, I do not. I take the position that unless all of the surrounding factors are brought to light in the question that any answer given to the question as to whether a man could sell one thousand carloads of steers

is nothing but a mere guess and it is not a proper question. It is an attempt to ask a hypothetical question without stating the hypothesis. It is not asking for an expert opinion.

The Examiner: Well, Mr. O'Bryan, the Examiner has ruled against you on that phase repeatedly, and that question has been asked and that question has been regarded, and that question was asked in the Omaha case which went through the Department and through three Federal Judges and through the nine judges of the Supreme Court of the United States, and that question, in the opinion of the Examiner, as he has repeatedly indicated, is clearly admissible, and it is not synonymous with what he did do. It is not based on a hypothetical question. It is based on what the witness knows or what the witness' opinion is based on the actual conditions that he, as a cattle salesman, has met.

Mr. O'Bryan: Yes.

The Examiner: And it seems to me there is quite a distinction between that and the two points that you contend for.

Mr. O'Bryan: It may be, but in all due respect——

Mr. Boyd: In response to what the Examiner said, it is conceivable to me, Mr. Examiner, the question may be put and the witness may answer "yes"——

The Examiner: Yes.

[fol. 933] Mr. Boyd: —and you have no facts, no circumstances, you don't know what is in the mind of this witness and you cannot call another witness to the stand and ask him the same question with the same facts and get the same answer.

Mr. O'Bryan: That is the test.

Mr. Boyd: The test is whether or not we can call another witness and ask him to take in certain surrounding facts concerning his answer and state it the same way and dispute or controvert the testimony of one witness with the testimony of another, and it is utterly impossible because they give no facts and it is utterly impossible to state in a question the circumstances at the Chicago market with which the witness is confronted, because we don't know what they were.

Mr. O'Bryan: With all due respect to the Examiner's ruling and to the Examiner's statement, that is no indication to me that either the Circuit Court of Appeals or the Supreme Court in the Omaha case ever passed upon the

propriety or the legality of a question of that kind. It is true that the Department may have found certain facts from the answers to questions of that kind and that courts of appeal would not go beyond those findings. I am trying to make a record here upon the legality and the propriety of that kind of a question so that if this case goes up, the higher courts can pass upon the question directly. Now, the only way I can make such a record is to continually object to these questions, and while I fully appreciate that the Examiner is going to overrule my objections in advance, I am still entitled to make my record.

The Examiner: Mr. Strachan, is there any phase of that question that is not clear to you?

The Witness: No, the question is very clear but the possibility of a truthful answer would be impossible. I would not have a thing to base an opinion or to estimate to you what my ability might be as to how many cars I could handle, sell in a week, a day, a year or two years.

The Examiner: That was not the question, Mr. Strachan. The question now under consideration was whether or not you could sell a thousand cars of cattle a year under the conditions that you have actually found them to exist if you had all of the cattle to sell that you can sell of the kind that you have been selling. Now that is the question. Now, if [fol. 934] you cannot answer that question I do not want you to answer it. If you can, I want you to answer it. That is my position.

The Witness: Do you want a "yes" or a "no"?

The Examiner: I want you simply to answer and you know what your answer should be. Do you know whether you can answer it or cannot answer it, or how it should be answered? I am not interested in what the answer is, but just to get the answer in the record.

The Witness: The answer to that question from me would be that I have absolutely nothing to base an opinion on as to what I could do.

The Examiner: Then, as I understand, the answer to the specific question is that you cannot answer whether or not you could sell a thousand cars of the type of cattle that come to your firm in a year if you had all of that type of cattle coming as they have come during the year.

Mr. O'Bryan: I think the question is specifically directed to steers, if the Examiner please, not cattle.

The Examiner: Well, steers, then, as they have been coming to your firm.

The Witness: I swear, I just, if I would say "yes" I might be telling you an untruth and if I tell you "no" I have nothing to base it on what I could do.

The Examiner: Well, I take it, then, that you mean that you cannot answer the question there, that is the thing, any other way than you have answered it, is that right?

The Witness: I have nothing to base it on to tell you "yes" or "no" and in my own mind feel that I am telling you the truth.

The Examiner: That is all I want, Mr. Strachan. I just simply want the truth as you see it.

When I go out each day I base my judgment as to price [fol. 935] principally on market conditions, classes of cattle, conformation, quality, flesh, and it is possible that one class of cattle might suit a particular order, we knowing that that particular locality calls for that class naturally try to dispose of them in that channel.

As to whether in my business, experience is of any value to me, I have never reached the height of perfection yet; we learn every day, but the experience that I have had in the past naturally would help me. It is a training that requires quite a long time to attain and you never really reach the height. Naturally my experience and training has all been directed towards developing my mind to arrive at my best judgment in respect to the price of livestock. I am not infallible. I believe there are days when I get the top price, and there are days when I do not get the top price. The prices I ask for livestock are based upon my judgment. No one ordinarily tells me what to ask for the livestock. Each day we are making an effort to get the last nickel for every class of cattle we have. When I go out to the country to appraise livestock for a customer, I size him up and give him my judgment. I receive telephone calls but not very often, from shippers for the purpose of obtaining my judgment as to market conditions and about what their livestock will bring as the result of the description which they give me over the phone. It has happened. I always try to use my best judgment. There is nothing to base an answer on as to whether I [fol. 936] think I can sell as many steers or the class of cattle I sell as any other salesman on this market, and I

cannot answer it. As to whether I believe I can render as good service as any other salesman on this market, it would depend where you were going to draw a comparison, in my opinion. It depends upon what an outsider thinks of our services. We try to keep it up to the standard of what is expected of us.

As to whether I think there are some who give better services than we do, I do, if they are accomplishing any more than we are in our efforts. I may possibly sell the most steers for our firm, and I answer that question, due to the fact that in the Fall of the year my assistant sells a good many of the grass cattle which might even up things through the whole, year in and year out.

As to whether our butcher salesman sells as many as either I or my assistant, as many cattle, it all depends upon the receipts of butcher stock. Some days he may sell more and some days less. I could not answer how long my assistant has been in the business of selling cattle. I do not know whether he has been in the yards longer than I have. I believe he was with Wood Bros. two years before I came. I believe I receive a larger compensation than he does. That is not necessarily based on the fact that I direct his activities. It is possibly based upon ability. As to whether I mean I can sell live stock better than he can, maybe; I think I can.

[fol. 937] It would be hard to determine whether I get a better price for what I sell than what he gets for what he sells. We are not both selling the same thing. The reason for the difference in compensation between my assistant and me is not because in selling steers he gets a lower price than I do. When I spoke of ability as being a reason, he perhaps has not had quite as much experience as I have had on some classes of cattle. Other classes of cattle he may have just as much. I possibly have a wider acquaintance than he has. It might have something to do with it. I do not know the extent of his acquaintance as compared with mine. It is a valuable factor. It is an asset, in a way, because you have a number of friends that have confidence in you, of course, naturally you receive a little more business from them.

I do not know the largest number of cattle I sold in a day in 1933. I cannot recall anywhere near it, I would have to refer to the records. I do not recall the largest

number of cattle received by our firm any day in 1933. I would have to refer to the records for that. The receipts vary somewhat from one day to another. That variation is sometimes very great. We handle them just the same, regardless of whether they are bad days, or large days, or small days. We handle them every day to the best of our ability.

I know Mr. Gene McAdams of John Clay & Co.; I believe I know Mr. Summers of the same firm, but don't recall the name.

[fol. 938] Q. In your opinion, can you sell as many cattle in a year as Gene McAdams can sell?

A. I don't know how many——

Mr. O'Bryan: I object to that question, if the Examiner, please, on the ground that no proper foundation has been laid for it. There is no evidence here that the witness knows how many cattle Gene McAdams has sold in a year; no evidence, no foundation laid as to the witness' knowledge of Gene McAdams' ability, and the question is simply asked for the purpose of trying to hook up the ability of this witness with the ability of some other witness to sell so many carloads of cattle in a year, and the further objection that this question is now directed to cattle, where in all previous questions along this line have been directed to this witness as to his ability to sell steers, and he has already stated it was impossible for him to tell how many carloads of steers he could sell in a year.

Mr. Miles: Take the ruling. No argument.

The Examiner: Read the question.

(Whereupon the question was read.)

The Examiner: I will overrule the objection, but I don't want you or any other witness to answer any question that is not clear to you or unless you have some intelligent opinion in the matter.

The Witness: That question is very clear. I have no idea how many cattle he can sell in a year.

Mr. Miles (continuing): Then, can you answer the question based upon your knowledge of Mr. McAdams or knowledge of your own ability, whether you believe you could sell as many as Mr. McAdams?

A. Nothing to base an opinion on.

Q. Assume that the record shows that Mr. McAdams has personally sold over 1300 carlots in a year, then, in your opinion, do you believe you could sell as many as Mr. McAdams has sold in a year?

Mr. O'Bryan: I object to the question on the ground [fol. 939] that it only assumes one fact, and that is the assumption that Mr. McAdams has sold 1300 carloads of cattle in a year; I doubt whether that assumption is of record, but we will let it stand as an assumption, unless the witness is asked and has knowledge of the condition under which Mr. McAdams is assumed to have sold 1300 carloads in a year, I submit that the question is incomplete and not a proper question.

Mr. Miles (continuing): Mr. Strachan, you may assume, if you wish, that you have just as favorable an opportunity as Mr. McAdams, that the situation is the same with you as Mr. McAdams, and that he has sold more than 1300 carloads in a year, do you believe you could sell as many?

Mr. O'Bryan: I submit, if the Examiner please, that to tell the witness to assume he had just as favorable conditions is very wide of the mark. If Government Counsel knows the conditions under which Mr. McAdams is assumed to have sold 1300 carloads a year, then Government counsel, in asking a proper question should state those conditions to the witness.

Mr. Miles: Take the ruling, no argument.

The Examiner: If your knowledge of the conditions under which you operate and under which you know that Mr. McAdams operates are such that would enable you to express an intelligent opinion on the matter, you may do so.

The Witness: I don't know how I could base any opinion as to whether Mr. McAdams may be working under different conditions than I, or vice versa. It is impossible to tell a truthful answer as to how many I may sell compared to him.

Mr. Miles (continuing): Does that complete your answer?

A. Yes, sir.

Q. Now, Mr. Strachan, you this morning told Mr. Dagger in answer to his question that you could not frame an opinion and state an opinion as to how many you could sell?

A. Yes, sir.

[fol. 940] Q. That is correct, is it not?

A. Yes, sir.

Q. Have you met commission men at any of the other yards?

A. Pardon?

Q. Have you met commission men and salesmen at any other stockyards?

A. Yes, sir.

Q. What yards?

A. Oh, practically all yards.

Q. You know the commission men at St. Louis, that is, East St. Louis?

A. Well, I don't know anybody in particular down there. I am better acquainted, perhaps, in Omaha and St. Paul.

Q. Do you know any of the commission men at Sioux City?

A. Yes, sir.

Q. How long have you known any one of them just what has been your acquaintance with them?

A. I got quite well acquainted with several of them while I was buying cattle for Swift & Company, I used to go at times from St. Paul to the Sioux City market to buy cattle, and in that way I got acquainted with them.

Q. Mr. Strachan, in your opinion, are the commission men on the Chicago yards as intelligent and well informed and honest as they are in Sioux City?

A. I think we have the highest type of men on this market here, intelligent men, their word is good, in fact, I think all cattle dealers on all markets are of the same caliber.

Q. Then, if it be true that commission men on other stockyards have been able to form and have been willing [fol. 941] to express an opinion as to their potential selling capacity, do you know of any reason why the men on the Chicago yards cannot do the same?

A. I can't——

Mr. O'Bryan: I object to that question, if the Examiner please, on the ground that what witnesses testified at other yards has no bearing on this case, and that if witnesses appearing before the Examiner at this hearing are able to sense the impossibility of answering a vague, improper question, which is not founded upon any fact, that is no reason why they should be bound by any testimony of

witnesses given at other yards who might not have sensed the import of the question.

Mr. Miles: Mr. Examiner, do I understand, then, that a witness would testify if he did not sense the import, but will not testify if he does.

Mr. O'Bryan: No, you don't have to understand that at all. You have to understand, Mr. Miles, that in my opinion the question has no foundation, as far as any irrelevant, pertinent or material facts are concerned, upon which an opinion can properly be based.

Mr. Miles: No argument, Mr. Examiner, not going to encumber the record by useless colloquies.

The Examiner: Read the question, will you?

(Whereupon the question was read.)

The Examiner: Objection overruled.

The Witness: Well, it is not a question of my willingness to express an opinion. That I am perfectly willing to do. But I do want to express an honest opinion or tell you the exact data or tell you nothing.

Mr. Miles (continuing): Mr. Strachan, may I suggest this, which is not in the form of a question, but a suggestion to you, that we recognize that when a man expresses an opinion, that that is quite different from stating a fact. Now, we have not asked you as a fact what you could do because no one in our judgment can state as a fact what he can do, he can only state what he has done, and if it gets into the realm of what he can do, then, that is an estimation based upon his own knowledge of the work, an opinion.

[fol. 942] Mr. O'Bryan: Then, I want to state to Mr. Strachan that the Secretary, in previous cases, has taken these opinions which are not based upon any facts, and which are mere opinions, and on the basis of those opinions has made definite findings of fact, that a salesman could or could not sell so many carloads of cattle in a day or a week or a year, and I also want to state to Mr. Strachan that the Courts of appellate jurisdiction have uniformly found that the Secretary of Agriculture, being in the position of a fact finding body, will not disturb the findings of fact of the Secretary of Agriculture, insofar as the facts themselves are concerned, if there is any evidence in the record upon which those findings of fact can be based, and that the purpose of this question is simply to get an opinion

from the witness upon which the Secretary may base some finding of fact.

Mr. Miles: Now, Mr. Examiner, you will note that because of sense of courtesy I did not interrupt the statement of counsel. In fact, I will say I am very glad to have that statement on record as showing their position in this matter. (Continuing) Now, Mr. Strachan, I will ask you this, before there is any ruling: Has the statement by counsel given under the form of a suggestion to you distracted your mind or in any way indicated to you what your answer should be?

A. Absolutely not.

Q. You are still willing to answer the question as honestly as if he had not made that statement?

A. Absolutely.

Mr. O'Bryan: And you are still willing, Mr. Strachan, to answer the question as honestly as if Mr. Miles had not made the statement to you which he did make which prefaced my statement to you?

The Witness: Absolutely.

Mr. Miles: And I will say that my statement was merely to differentiate between a statement of fact and a statement of opinion with reference to which this witness seemed to be bothered, and in no way can that statement be compared with the statement made by Mr. O'Bryan.

Mr. O'Bryan: I will let the record show what your statement was and my statement and the meaning of either [fol. 943] statement was, Mr. Miles; they are very apparent.

Mr. Miles: That is very good. No, go ahead. Now, there is a question on the record, Mr. Strachan.

The Witness: Read it again, please.

Mr. O'Bryan: In fact, mine was more apparent.

Mr. Miles: You bet it was, sir, to your own damage.

(Whereupon the question was read.)

The Examiner: Is the question clear to you?

The Witness: The question is, why I am not able to give an opinion as to the fact as regarding how many cattle I might sell as compared to somebody's else testimony?

Mr. Miles: No, very briefly it is this: I am now paraphrasing it and not giving it as I first gave it.

A. Yes, sir.

Q. That other commission men have been able and willing to give their opinion as to how many they could sell if they had all the supplies they wanted, all they could handle, why, in your judgment, cannot the commission men on these yards, being just as intelligent, form an opinion, and why should they not be willing to express an opinion as to what they could do?

A. I am not aware of the fact——

Mr. O'Bryan: I object to that question as to the witness' opinion as to what commission men on these yards do. If it is restricted to the witness' opinion as to why he, himself, cannot give an answer to that question, then it is proper; otherwise, it is manifestly improper.

Mr. Miles: Take the ruling.

(Whereupon the question and part of the answer and Mr. O'Bryan's statement were read.)

The Examiner: Mr. Miles what have you to say as to the point Mr. O'Bryan raises as to whether or not the question should be confined to the winess' testimony rather than to [fol. 944] the other salesman or commission men on this market?

Mr. Miles: If this witness knows of any reason why the commission men, taken as a whole, on these yards, are not able to form an opinion and are not willing to express it, or are able and should be willing, I want that. If the witness wants to limit his answer as to why he himself cannot—feels that he must limit his answer that way—then I want that. Whatever the witness wishes to do about that answer is satisfactory to me, whether limiting it to himself or state for the entire yard.

Mr. O'Bryan: I submit, if the Examiner please, that there is no foundation laid or no evidence here that the witness knows what opinions have been expressed by other commission men on these yards and to ask him a question as to his opinion as to what other commission men have expressed as to their ability is absolutely without foundation, and that the only possible proper question without a proper foundation that could be asked him is what his own opinion is.

Mr. Miles: Take the ruling.

The Examiner: Do you know whether or not most of the other salesmen have or have not expressed any opinion in

regard to what they could sell if they had the livestock to sell?

The Witness: I just started to say there that I was unware of the fact that any other witnesses had declined to express the fact of what they might do and what they might not do, and I am sure that none of them will come here unwilling to give all the facts that they possibly can truthfully, and, as far as testifying to an opinion as to what you might be able to do, and what you might not be able to do, I personally find it rather hard to give a definite answer.

Mr. Miles (continuing): Now, that is correct, Mr. Strachan, so far, but now I want to know if you know any reason why the commission men on these yards are not as well able to form an opinion.

The Witness: That fact——

Mr. O'Bryan: Wait a minute. I object to that question in view of the witness' answer that he does not know [fol. 945] whether or not they did or did not express any opinion and that the question is absolutely improper. If the question is framed to the point as to why this witness himself cannot express an opinion, then the question is proper. Otherwise, it is, as I said before, manifestly improper, and the witness has so testified prior to the asking of this question, that he did not know what commission men on these yards did or did not testify to as to their ability to sell a certain number of carloads of cattle.

Mr. Miles (continuing): Mr. Strachan, it is already in the record from the testimony of a number of witnesses, that is, salesmen of each class or species of livestock, that they could not express an opinion on the question of how many they believe they could sell. That is already in this record. This record also shows that on another yard many salesmen did form and express an opinion as to how many they could sell. Now, there are your two of what we may call parallel columns, salesmen on these yards as opposed to salesmen on another yard. Do you believe that the salesmen on these yards are just as efficient and honest as they are on the other yards?

A. Yes, sir.

Q. Now, I am asking you why the difference, if you have any reason that you can assign for it, why cannot Chicago salesmen testify what their opinion is, as they have done on other yards?

Mr. O'Bryan: Now, I again object to the question on the ground that this witness has definitely stated that he does not know as to whether or not Chicago salesmen testified as to what they did or did not do, and that the question is not based upon a premise regarding which the witness has already made a definite answer, and that the only proper question that can possibly be asked this witness under those circumstances is the witness' own reasons as to why he cannot testify personally as to any guess as to whether he could sell a given number or not. It is perfectly apparent.

The Examiner: Objection overruled.

(Whereupon the question was read.)

The Witness: Well, I will swear I don't know how to answer that question.

[fol. 946] Mr. Miles (continuing): You say you do not know?

A. I do not know how to answer that question.

Q. All right, and that is the only answer you can make, by saying that you do not know how to answer. I don't want to cut you off in your answer.

A. Repeat that question again, please.

(Whereupon the question was re-read.)

A. Well, I had a question put to me a few minutes ago telling me that Gene McAdams sold 1300 cars of cattle in a year. It is evident that he was willing and knew what he was doing. Is that correct?

Mr. Miles: No, I will state for the record that we have an actual performance, that is, actual sales by Mr. McAdams, that is, for the firm, and then based upon the number of salesmen, it would average 1300 for each salesman, and he testified that he sold more than any of the steer salesmen. In other words, we have an actual performance there. Now, we have asked this witness not what the actual performance was, but what they think they could do if they had all the livestock they could handle, of all the steers they could handle, or hogs; in other words, a difference between actual performance and what their own estimate of their own ability would be. Is that situation clear to you?

A. Yes, sir.

Mr. O'Bryan: Now, I want to make a statement on the record that Mr. Miles' statement is in error, that the

actual performance, as shown by the record, the actual fact as shown by the record, is that Mr. McAdams testified that he thought the highest number of carloads that were ever sold by his firm in any one year was approximately 1300, that he was asked to produce the actual figures, and that the actual figures showed that the average number of carloads ever sold by his firm in any one year was 1139 carloads in the year 1932, and that Mr. McAdams also testified and the record so shows that he did not operate alone in the selling of those 1139 carloads on the average sales that his firm sold in any one year. Now, those are the facts and the record, I think, will bear me out. And, also, Mr. Mc-
[fol. 947] Adams further testified as to certain definite factors which entered into the reason for his firm having average receipts and the ability to sell an average which was higher than the other firms on this market.

Mr. Miles: Now, Mr. Examiner, the statement by Mr. O'Bryan with reference to the number sold is incorrect, but that is for the moment not material. I was trying to present to this witness the difference between statements of fact that appear in the record, not necessarily by oral testimony, but by any testimony in the record, a difference between a statement of fact and an opinion as to what the man could do, and I will ask the witness whether the situation is clear, that my question dealt not with how much one had actually done but as an opinion as to what they could do, and I have asked you a question why people on other yards could express an opinion on what they believed they could do, whereas, on these yards, with few exceptions, they have not been able or willing to express an opinion on what they could do. Now is the situation clear to you?

The Witness: The first question that was put to me, that in view of the fact that I testified that commission men on the Chicago market were just as honest and intelligent as they were on other markets?

Mr. Miles: Correct.

The Witness: Why, a lack of willingness to testify as a possibility as to what they might be able to do, is that correct?

Mr. Miles (continuing): Why, fairly so. Let me see if I can put the question again to you. That since, from your testimony, you believe the commission men on this market

are as honest and as efficient and so forth as on other yards, if it be true that on other yards the salesmen have expressed opinions and if it be true that on these yards they have not been able or willing to express an opinion, just what is the reason for it?

A. My answer was that I was unware of the fact that previous witnesses on this market expressed unwillingness to answer such questions, and had just had brought to my attention here, now, that Mr. McAdams testified as to his possibilities.

[fol. 948] Q. No, he did not testify as to his possibility. There is an actual sales performance in the record.

A. Well, it is pretty hard for a salesman to keep numbers in his mind. Now you are calling me here impromptu; if I had known that you were going to ask certain facts as to what I have done or the possibilities of what I might do, I would suggest that you refer to our records.

Q. Your records only show what you had done.

A. Yes, sir.

Q. Now, the question was asked you what, in your opinion, you could do.

A. I might be able to do?

Q. Yes, sir. Now, as I stated, salesmen on other yards have testified as to what they thought they might be able to sell, but they have not been able or willing to testify along that line on the Chicago yards; and why that difference?

A. I do not see any——

Mr. O'Bryan: I submit, if the Examiner please, that unless the witness knows why salesmen are not able to answer the question on these yards and unless the witness knows that in the questions asked those salesmen as to their ability, the only assumption made was that they had all the cattle that they could sell of the same kind and quality during a year's period, without taking into consideration any of the ever-changing factors during that year, that the question is an improper question and that the witness can properly only be asked about his own reasons for not testifying and as to the guess or estimate of the number of carloads that he might sell, in answer to that question.

Mr. Miles: Mr. Examiner, we have consumed too much time on this subject, and I do not want to take further time.

If the question before the witness is clear, I ask for the ruling of the Examiner.

The Examiner: Mr. Strachan, is that question clear to you?

The Witness: Yes, sir.

[fol. 949] The Examiner: Do you understand it entirely?

The Witness: Well, I cannot quite fathom the bearing of it.

The Examiner: Well, the point I am interested in is whether the question is entirely clear to you, irrespective of what your answer might mean or might not mean.

The Witness: The question, as I understand it, is the fact that Chicago commission men are as intelligent and truthful as other markets, why cannot, what is the reason the commission men on this market cannot testify to a possibility?

Mr. Miles: That is correct.

The Witness: Is that correct?

Mr. Miles: Yes, sir.

The Examiner: Now, the only thing the Examiner is interested in, and I do not care what your answer is, if the question is clear to you and you can answer it, I would be glad to have you answer it. If you cannot answer it, all you have to do is to say: "I cannot answer it."

The Witness: Things vary in facts or truth so I do not expect to express an opinion, because I could not truthfully express it.

Mr. Miles (continuing): I will ask you, do you know of any reason why the salesmen on the Chicago yards are either unwilling or unable to express an opinion about the possibility of selling capacity?

Mr. O'Bryan: I object to that question in that it assumes a premise as to which the witness has not been interrogated as to whether he knows whether or not salesmen on this market have or have not expressed an opinion on that point. Now, he cannot be interrogated as to reason unless he knows the facts, and if he does not know the facts, he has nothing upon which to base a reason.

Mr. Miles: You may assume that statement to be a fact, because I have included it in the question; and because it is a fact, as shown by this record. Take the ruling.

The Witness: Question, please.

[fol. 950] The Examiner: If the witness knows, he may answer.

(Whereupon the question was read.)

The Witness: No; on the contrary, I think that every one of them are very willing to cooperate with this investigation to the best of their ability in putting facts and not possibilities or probabilities.

Mr. Miles (continuing): Mr. Strachan, I will ask you this: To your knowledge, has this case attracted any attention on the yards, resulting in comment among the salesmen?

(Whereupon the question was read.)

A. Not to my knowledge in detriment to the investigation any more than it was being carried on.

Q. Have you heard any comment from any of the salesmen or employees of the various commission men about this case?

A. Nothing more than it was being tried here.

Q. Have you heard any comment to the effect that certain employees of the various commission men have either been unable or unwilling to answer any questions propounded by the Government?

A. No, sir.

Q. Has there been called to your mind, either directly or indirectly, by any person, by any word, written or spoken, that certain questions propounded by the Government ought not to be answered or that you should not answer them?

A. No, sir.

Q. Has there been any suggestion made to you by any person in any form whatsoever, indicating that you should not answer certain questions or indicating——

A. No, sir.

Q. —or indicating what your testimony should be, in any manner.

A. No sir, I am not biased in any way; it would not make any difference.

[fol. 951] Mr. O'Bryan: If the Examiner please, I have let this line of questions go on; it is clearly improper, it is an attempt on the part of the Government, if it is anything,

to try to impeach or deprecate the testimony of their own witness, and I submit that it also is a reflection on counsel for the Respondents, and I want the record to show that as far as counsel for the Respondents are concerned, or at least this counsel for Respondents, and Mr. Boyd, I am sure, would agree with me, has not been discussing as to these questions with any witness, and I am standing on my legal rights as an officer of this court in making proper legal objections to questions, which, in my opinion, I believe are absolutely improper questions and which no intelligent man, after mature consideration, could possibly give an answer to, except an answer which would be a mere guess, and I resent the implication in this line of questioning, both on my part and for the witness.

Mr. Miles: So far as the witness is concerned, you stated he is the Government's own witness, and therefore he does not need your protection and probably does not want it. So far as any implication that you or Mr. Boyd have made, in suggestions to any witnesses, directly or indirectly, I have not so stated, nor did I intend so to state or intimate. I previously made that statement to Mr. Boyd on the record in answer to one of Mr. Boyd's objections and I now make it to you. (Mr. Boyd was absent during the examination of this witness.)

Mr. O'Bryan: All right.

Mr. Miles: And please be assured that if I knew of any case where you had done it, I would certainly present it to some proper tribunal.

Mr. O'Bryan: And if there was any case in which I had done it, I certainly would admit that I had done it.

Mr. Miles: All right, shall we get back to the record?

The Examiner: Yes, sir.

Mr. O'Bryan: And, personally, I might say I see no reason why I should not do it, so far as that is concerned, in a perfectly proper manner, and any witness sitting here who has overheard any of this examination and cross-examina-
[fol. 952] tion could not help but draw the same deduction that I have drawn.

Mr. Miles (continuing): Mr. Strachan, you have testified and I will not attempt to quote your language, but testified in substance to this: that the salesmen were willing to come here and give facts to the Government; is that correct so far?

A. Yes, sir.

Q. But did you state that they were not willing to give opinions to the Government?

A. No.

Q. Will you just clear that up please.

A. You bet. I cannot express an opinion as to their willingness but I stated that I didn't see any reason why any of them would not be willing——

Mr. Miles: Will be willing to?

A. Will be willing to.

Q. Willing to give opinions?

A. Yes, sir, of course, it would depend a good deal upon the individual. Some individual may have an opinion that he would like to express and feel truthful in expressing that opinion and I see no reason why he should not, if he can truthfully do it.

Q. You know, Mr. Strachan, do you not, that in a great many lawsuits there are what is called opinion evidence. It may be the case of two physicians testifying on sanity or insanity, and you know the opinion of these experts disagree. You also know that the opinions of experts on ballistics disagree and in those cases that there is no question raised as to the honesty of opinion. It is simply an honest disagreement. Now, I will ask whether you have heard any of the salesmen or employees of any kind or owners of various market agencies, either corporate owners or partnership, express any views that anyone should not express an opinion when asked for an opinion?

Mr. B'Bryan: Now, before you answer that question, Mr. Strachan, I want the record to show the questions I am going to ask you. You know, do you not, that medical experts, before they pass opinions, found them on certain facts; and you know, do you not, that ballistic experts, before they express an opinion, found them on certain [fol. 953] definite facts; and I take it that if you were given certain definite facts upon which you could base an opinion that you would be very willing to give an opinion based upon those facts, but that when you are asked a question so general in nature which leaves it to you to assume all the facts on a varying market, day in and day out, for a period of a year, that it is humanly impossible for you to assemble the facts upon which to base a proper opinion, isn't that true?

The Witness: That is what I have been driving at for some time.

Mr. Miles: Beg pardon?

The Witness: That is what I have been trying to drive at for some time.

Mr. Miles: That is exactly what we are all trying to drive at. As witnesses on other markets have testified according to this record that they do have an opinion, just why they could not on this market, you are not able to wholly and satisfactorily answer that question, is what I am trying to get at. In answer to Mr. O'Bryan's suggestion about experts, you also know, as a matter of fact that there is a difference between a hypothetical question wherein an opinion of witnesses was asked, and his only knowledge of facts was based upon testimony to a question based upon expert knowledge of facts; do you know that that difference occurs?

The Witness: Yes, sir.

Mr. Miles (continuing): And, in your case, it is only a question based on expert knowledge of facts.

Mr. O'Bryan: Now, I object to that statement of counsel. That is an assumption of counsel that neither he nor the witness can state as a fact, nor I can state as a fact, and I take exception to it because I think it is improper and that this witness, when he is asked a question of that kind, is not testifying as an expert and he has not been qualified as an expert to testify upon a question of that kind.

Mr. Miles: No argument.

The Examiner: Well, as I understand it, there is not any question pending on the record anyway.

(Record closed. Record opened.)

[fol. 954] Mr. Miles: Now, Mr. Strachan, based upon your knowledge of the facts, as they exist on the stockyards, you do know, do you not, that any salesman can sell one carload in a week, taking conditions just as you find them?

The Witness: Could he sell a carload in a week?

Mr. Miles: Yes, sir.

The Witness: Possibly.

Q. And do you not know that they actually do that, if they have the receipts?

A. Do I know they do that?

Q. Yes, sir, sell at least one carload per week, if they have the receipts?

A. I would think they would, yes, sir.

Q. Surely. That is based upon your knowledge of the facts and the salesmen and all the surrounding conditions, is it not?

A. Yes, sir.

Q. Now, let me ask you this: Based upon your same knowledge, do you not know that salesmen on these yards, if they have the receipts, sell as much as 500 cars?

Mr. O'Bryan: I object to this line of questioning as being simply argumentative, that no definite period is fixed on which the question is based, that no surrounding circumstances under which 500 cars may be sold or not sold by a given salesman are stated to the witness, and that the witness can in an answer to a question of that kind, do nothing but make a pure guess.

Mr. Miles: Now, of course——

Mr. O'Bryan: Now, it is very apparent that any salesman, if he were to sell cattle or steers at a price of 50 cents or one dollar under the market for that day, and he had the supply available, he could sell 500 cars, while if he had a price which was 50 cents or one dollar above the market, he might have to hold them over for five days. The record is clear on that. That the market changes from day to day, and this is not a proper question, and it is merely argumentative and the witness has already answered the ques-[fol. 955] tion completely, stating that it is impossible for him to make a guess.

Mr. Miles: Will the reporter read the question?

(Whereupon the question was read.)

Mr. Miles (continuing): Not that they could sell, but they actually do sell in a year's time?

The Examiner: As I understand that question, Mr. Strachan, that has gotten away from the question that has been discussed at such great length as to what they could do if they had an unlimited number of cattle to sell, and that question is directed at what they have done. Now, if you know, you may answer; if you don't know, all you have to do is say so.

Mr. O'Bryan: If that is, Mr. Strachan, your understanding of the question, is it?

The Witness: The question is, under conditions, could I sell 500?

Mr. Miles (continuing): No, do you know that other salesmen actually have sold 500 carloads of cattle in a year?

Mr. O'Bryan: Then I submit the records of what other salesmen have done are the best evidence of what they have done, and not what Mr. Strachan knows or does not know.

Mr. Miles: I am not asking what they have done. I am asking if this witness knows.

The Examiner: The witness may answer whether he knows.

The Witness: Put the question to me again, please.

Mr. Miles: Will you read the question, please?

(Whereupon the question was read.)

The Examiner: The question is simply, do you know?

The Witness: I think the records already show that that has been done.

Mr. Miles: And do you know that to be true?

A. It is in the records, isn't it?

[fol. 956] Q. No, I am asking if you know?

A. I expect it is.

Q. Do you know the greatest number of cattle that any salesman on these yards have actually sold in the course of a year?

A. No, I don't.

Mr. O'Bryan: I object to the question on the ground that the records themselves are the best evidence of what any salesman sold in any year.

Mr. Miles: I did not ask what they had sold.

Mr. O'Bryan: What difference does it make whether he knows or not. It is not proper evidence.

Mr. Miles: It is not a proper objection and will not be until followed by another question.

Mr. O'Bryan: All right, I will object on the ground that it is immaterial.

The Examiner: The witness has already answered the question he did not know, so all the objection and discussion of it seems to me to be immaterial.

Mr. Miles (continuing): Mr. Strachan, have you attended any meetings of the Exchange, whether formal or informal regarding this hearing now going on, either before it actually came on or after, where this hearing was discussed?

A. Meeting of the Exchange, of the Live Stock Exchange?

Q. Of the Live Stock Exchange.

A. No, sir.

Q. By that I mean the members of the Exchange in a called meeting or informal meeting?

A. No, sir.

Q. Have you been in session or, that is, have you been in conversation with any group of the Respondents or their officers or employees where the hearing and the testimony to be adduced was discussed.

A. No, sir.

[fol. 957] Mr. O'Bryan: I am not objecting to this line of questioning, but I submit to the Examiner that it is immaterial whether any witness for a Respondent firm in this case attended any meeting or had any conference with his attorney in connection with the case.

Mr. Miles: I did not say his attorney.

Mr. O'Bryan: I don't care whether it is his attorney or his auditor or who it is.

The Witness: I understood the question as a conference or a meeting.

Mr. Miles (continuing): Or informal conversations?

Mr. O'Bryan: If the Government takes the position that a client cannot consult with his attorney or his assistants previous to the trial of the case, then I think they are stretching the point pretty far.

Mr. Miles: I think that the counselor, let us say, misunderstands the question.

Mr. Mudd: I would like to make a statement in that connection, that there has been no meeting, either formal or informal, with the members of the Chicago Live Stock Exchange who are Respondents in this case in which either Mr. Boyd or I appeared, and to my knowledge there has been no such meeting without our appearance, so it was neither with or without our presence.

Mr. O'Bryan: I might submit, Mr. Mudd, that if there had been such a meeting, you were perfectly within your rights to consult with your clients as to the conduct of this case.

Mr. Mudd: I am sure Mr. Boyd has not discussed this subject either individually or collectively with the Respondents, and I know that I haven't.

Mr. Miles: Mr. Mudd, there is a deliberate attempt to befog the issue. I deliberately acquitted Mr. O'Bryan and Mr. Boyd, so far as I have any knowledge of it, from any

attempt or intent to coerce, intimidate or influence these witnesses, so this is merely a smoke screen now being thrown out. There is a question on the record to the witness.

Mr. O'Bryan: In regard to the smoke screen being thrown, I will say the questions seemed to me a smoke screen thrown up by Government counsel to account for [fol. 958] what he claims is an inability or unwillingness to answer questions which are not possibly able to be answered.

Mr. Miles: With the exception of your last statement, you are 100 per cent correct.

(Whereupon the question was read.)

The Witness: No, sir.

Mr. Miles (continuing): Mr. Strachan, do you recall blackboards that were in one of the rooms of the Exchange Building setting up so-called cost studies for various Respondents?

A. For various what?

Q. Various respondents, that is, commission men.

The Examiner: Read the question.

(Whereupon the question was read.)

The Witness: Never heard of them.

Mr. Miles (continuing): And never saw any of them?

A. No, sir.

Q. They were never discussed in any way?

A. No sir.

Q. And has there been any attempt on the part of anyone to suggest to you directly or indirectly by written word or spoken word, by a formal conference or informal conference, or by information conversation, what testimony you should avoid or what testimony you should give?

A. No sir.

Q. By any person whatsoever?

A. No sir.

Mr. Miles: I think that is all, then.

[fol. 959] Cross-examination:

Q. Mr. Strachan, Mr. Miles would not ask you to give the r[illegible]ons why you could not answer a general question

of the nature of the question or questions which he put to you, and I presume that you have some valid, definite reasons why such a question could not be answered intelligently?

Mr. Miles: I object to counselor's testimony, because it does not clearly reflect the facts. I asked this man to give his opinion as to the various commission men, or his own view.

Mr. O'Bryan: You never asked him for his own views.

Mr. Miles: And I reply that I did ask for his own views.

Mr. O'Bryan: All right, I will ask him again.

Mr. Miles: Perfectly all right. At this time, when you testify, please state the facts correctly, or say as you understand them.

Mr. O'Bryan: Well, that is, as I understand them. The record will show what you asked him.

The Examiner: The witness may answer.

(Whereupon the question was read.)

Mr. O'Bryan (continuing): That is, in connection with the amount or number of carloads of steers which you could sell in the year 1932 or any given year?

A. Do you mean he must have some reason why he could not?

Q. Answer the question the way it was put to you.

A. Because I don't know.

Q. And it would be impossible for you to know how to answer the question unless you first took into consideration all of the conditions as they existed day by day, the buying demand, the receipts, and everything else connected with the market each day before you could intelligently answer such a question, wouldn't it?

[fol. 960] A. Well, I suppose you have covered it all. There are quite a few conditions that come up which in one day, one hour, are not the same down there. They vary all the time, different conditions.

Q. There are no two days alike?

A. Never are alike.

Q. No two hours alike in a year's experience on this market, are there?

A. No, sir.

Q. And the prices vary from day to day and from hour to hour and from your experience as a salesman is it not a fact that if you are permitted to sell cattle at a price which is considered under the market, there is no selling effort connected with the sale of such cattle, is there?

A. No, sir.

Mr. Miles: Objected to as hopelessly incompetent.

The Examiner: Objection overruled.

Mr. O'Bryan (continuing): If, on the other hand, you should receive cattle from a country shipper who would request that you hold those cattle for a certain price and that price on the day they were received was way above the current market and continued to be above the current market day by day, it would be humanly impossible for you to sell them at the price which the country shipper had fixed on them, isn't that so?

A. That is quite true, but I testified this morning that in selling cattle, I used my own judgment as to what to ask for them and what I thought they would bring under market conditions. We do have cases where a feeder may come to market who is not very well posted on the values on possibly the particular grades of cattle, who might ask me what I figured they will bring. He, in turn, may be expecting seven cents for them. To my best knowledge, they would not bring over five and three-quarters. In such cases we have to work them out, do the best we possibly can. Sometimes, on the advice of the owner, we are obliged to hold them over because they will not sell up to his expectation. Does that bring it out?

[fol. 961] Q. Yes, and if on another certain given day, Mr. Strachan, the big packers have received large shipments of direct purchases, and their killing complement is complete, that is, they don't need to come on this market to buy any cattle for their kill, that decreases the buying demand, does it not, and automatically increases the selling difficulties on the market; in other words, there is not the competition that there would be if the big packers were in the market to fill up what they considered their killing complement on that day?

A. It is true.

Q. So that the whole thing day by day is based upon the

law of supply and demand, the price of by-products, the condition of the fresh meat market, and innumerable factors which have to be taken into consideration each day and each hour on this market?

A. Just as I testified this morning.

Q. And in fixing your price for livestock, the price at which you think you will sell it, you have to take into consideration as a salesman all of those varied factors, do you not?

A. Yes, sir.

Q. Has there ever been any such thing in your experience on the Chicago market as all of the kind and quality of livestock of a given kind which you could sell, such as steers, regarding which you were interrogated?

A. Read that again, please.

(Whereupon the question was read.)

A. I would have to have that clarified.

Q. I mean for a year's period, has there ever been receipts on the Chicago market constituting solely all steers of a given kind and quality.

A. Yes, that is true at times.

Q. But it has never run for a year's period.

A. Oh, no, there are certain times of the year that we are very apt to get a certain class of cattle. Say, for instance, at the present time and for the past three weeks, [fol. 962] feeders of plain kinds of cattle have been liquidating to get out of the way of the competition of the grassers which are now starting to come and will come from now on.

Q. But that condition only exists during a short period of the year, does it not?

A. It does.

Q. And three months from now, there might be none of that class of cattle received on this market?

A. They will be all out of the way, the plain quality fed cattle.

Q. That is the point I am trying to bring out, that classes of cattle vary from month to month and week by week, as far as the receipts on this market are concerned?

A. Yes, they do.

Redirect examination:

A. In your opinion, could your firm, taking it as a whole, have sold more cattle in 1932 or in the present year of 1933 than you actually did sell, if you had had them to sell?

Mr. O'Bryan: Now, I object to that type of question in that it is ambiguous, in that it does not refer to any distinct type of cattle and the record is clear that cattle vary as to grades, quality, price, and that unless all the factors are stated to the witness in the question, it is manifestly an improper question.

Mr. Miles: Take the ruling. No argument.

(Whereupon the question was read.)

The Examiner: Is there anything about that question you don't understand or any additional facts that you need?

The Witness: Well, I hardly see the point to the question; if you will kind of clear it up—does the question mean whether we could have sold more cattle, had we had them?

Mr. Miles: Yes, sir.

The Witness: Is that the point?

[fol. 963] Mr. Miles: That is correct.

The Witness: Well, I suppose we possibly could have. However, I don't know just exactly what we did during that period.

Mr. Miles (continuing): Now, in your attempts to get new business or when you attempt to get new business, you do that in the belief that you can sell the cattle if you get them to sell, do you not?

A. We certainly do, or we couldn't solicit.

Q. Now, if your firm would receive let us say 100 carloads a year more than you received last year, in your judgment, would you put on an extra salesman?

Mr. O'Bryan: Now, I object to that question in that it is incomplete, that no foundation is laid for it; there is no evidence here either as to what Wood Brothers did sell or that this witness knows the number of carloads that they sold. There is no proper foundation laid for such a question.

Mr. Miles: I am not interested in what they actually sold. I am asking the witness if they received 100 carloads a year more than they did receive.

Mr. O'Bryan: More than they actually receive?

Mr. Miles: In his opinion, would they put on an extra salesman.

Mr. O'Bryan: I still make the same objection that he does not know the receipts or that there is no foundation laid as to what the receipts were or that the witness knows what the receipts were and that it is humanly impossible to answer a question which is not founded upon some facts which are within the witness' knowledge.

The Examiner: Do you need any additional facts or any qualifications on that question in order to intelligently answer it?

The Witness: Well, I would think there would be quite a few provisions to have to be met. It would depend a good deal upon the year, the time of the year, it would depend a good deal upon market conditions and various phases.

Mr. Miles (continuing): In the present condition of the record, you cannot answer the question?

[fol. 964] A. No, sir.

Q. Mr. Strachan, you have testified that you sell, and by "you" I mean your firm—and your cattle salesmen would sell all the cattle you receive over the course of a year, do you not?

A. Beg pardon?

The Examiner: Read the question.

(Whereupon the question was read.)

Mr. Miles (continuing): You sell all the cattle you receive in the course of a year?

A. I personally?

Q. You plus your other salesmen?

A. Yes, sir.

Q. And you sold, regardless of whether they are fat or lean, whether slow days or fast days, at the end of the year you have finished selling all of your receipts, haven't you?

A. Yes, sir.

Q. Just what difference is made by a fast day market and a slow day market with reference to your selling?

A. You mean what amount of time that it requires to satisfactorily sell the cattle?

Q. Yes, sir.

A. Well, now, that is kind of a hard one, too. I might start out with a fast market and get a few cattle sold at a very good price and I have seen the time that in ten minutes the market has turned the other way and I have been stuck with them until 3 o'clock.

Q. All right. Regardless of whether slow or fast, you will sell all that you receive, day in and day out, and isn't it true that the only difference between the two days is it will take you longer to sell on a slow day than on a fast day?

A. Well, as I testified before, we very seldom hold cattle over.

[fol. 965] Q. Yes.

A. There are instances now and then that we are simply obliged to do so.

Q. Have you held them over on a fast day?

A. I have on advice of a shipper, yes.

Q. Have you held them over on a fast day because you could not sell them?

A. No, sir.

Q. Never in your life?

A. That would hardly be improbable not to be able to sell them on a fast market.

Q. Well, now, Mr. Strachan, you have told us that you do sell everything that you receive, and when I say "you" I mean you plus your other two salesmen.

A. Yes, sir.

Q. Regardless of the kind, condition or quality that comes to you, I will now ask you this: Taking your experience as it has run, if your firm were to receive 100 carloads per year more than you are now receiving and they were to come just as you had them come to you in the past, would you put on an extra salesman in order to meet that demand?

Mr. O'Bryan: I will make the same objection. The question is vague and ambiguous, no proper foundation laid for it unless the facts are all taken into consideration as to the conditions surrounding the ages and what the sales actually were; it is an improper question on the ground it has no facts upon which the answer could be based contained in it.

The Examiner: If you know, you may answer.

The Witness: It is impossible for me to tell whether I would know.

Mr. Miles (continuing): Well, now Mr. Strachan, you have testified in answer to Mr. O'Bryan's question and I am not now quoting you, but giving the substance of it, that one reason you could not answer Mr. Dagger's question as to your potential selling ability was that the cattle or your receipts were not all steers, that they did not come that way, is that correct?

A. Receipts that we have are not all steers, yes, sir.

[fol. 966] Q. Yes, and was that the reason you could not answer Mr. Dagger's question?

A. In respect to what?

Q. How much you could sell in a year.

A. Why, not necessarily; I could not form an opinion as to what I might do in a year.

Q. And could you form such an opinion, taking the livestock as it comes to you, that is, it may be fat steers, it may be stockers, it may be each and everything that comes to you in the course of a year; do not limit your answer to fat steers, or to any kind, but take them just as they come and take all the days and conditions as you meet them throughout the year; you have fast days and slow days, hot days and cold days. Taking those things into consideration and basing it upon your own experience, could you now answer the question?

Mr. O'Bryan: I object to that question on the ground that it calls upon the witness to assume conditions which general knowledge knows that no human being could possibly assume and that is the daily experience, day in and day out, of a market such as the Chicago market over a year's period of time, and without a knowledge of those conditions it is apparent that nobody could answer a question based upon those conditions which he might be called upon to assume.

(Whereupon the question was read.)

The Examiner: If you feel that you can intelligently answer the question, you may do so.

The Witness: I do not feel as I could express an intelligent answer.

Mr. Miles (continuing): Now, what facts or circum-

stances would you require to be put before you in order to express your opinion as to how much you could sell if you had the livestock to sell?

A. That question, again, please,—what facts would I need?

Q. Yes, in order to express an opinion.

A. I don't believe I could express an opinion until the facts were presented.

Q. Just what facts would you want presented in order to enable you to express an opinion?

[fol. 967] A. If I were to sell 5000 cattle in one day, I would have to have them to see if I could do it or not. I do not know if I could.

Q. Then, is that only, that is the only reason that you are unable to express an opinion as to what you could sell, based upon the fact that you have never had as many to handle as you could have handled?

(Whereupon the question was read.)

A. Not necessarily.

Q. Does that complete your answer?

A. Yes, sir.

Q. What other facts would you want in order to enable you to form an opinion?

A. I do not know; to form an opinion, the facts would have to be completed and made specific to that effect. I have never, as I say, if I were given 5,000 cattle to sell in a day, I don't know if I would hold out or not.

Q. All; could you on 3,000?

A. I couldn't say; God would have to be my guide during the day.

Q. Are you familiar with the Chicago Daily Drovers Journal?

A. Yes, sir.

Q. Do you regard that as a newspaper that is authentic?

A. Yes, sir.

Q. Mr. Strachan, I am going to ask you to do this. I am handing you a folder of the Chicago Daily Drovers Journal; the first paper in here is marked June 5, that is dated Monday, June 5.

A. This year?

Q. Of this year. I am going to ask that you read as carefully as you wish, or make as cursory an examination as

you may wish, whichever will satisfy your mind as to the conditions prevailing on June 5, and then——

[fol. 968] A. Is that the day we had the 21,000 cattle?

Q. The receipts, I believe, are shown here. I didn't check them up. And, after reading this, I am going to ask you this: How many, in your opinion, you could have sold if you had had them to sell?

Mr. O'Bryan: All right. Now I want to object to that question on the ground that it assumes that this witness can, from reading the Drovers Journal from June 5, state how many cattle he could have sold if he had had them, without asking the witness to assume any of the other facts surrounding the sale of those cattle which might have occurred in the witness' own business on the day in question, or without assuming either the type or the grade or quality of the cattle which he might have received on that day, or without assuming the price which might have been set by country shippers shipping to him on that day; and the fact as to what the witness could have sold on that day is best evidenced by the fact of what he actually did sell on that day and the records themselves are the best evidence of that fact. For that reason, I object to the question as not being properly founded, not being complete, and being absolutely ambiguous.

Mr. Miles: Mr. Examiner, I will just make on statement; I refrain from further conversation over it. I just say this: The fact of what this witness did sell is in no way material to what he could have sold if he had more supplies to sell. Take the ruling.

The Examiner: Mr. Strachan, one of the objections made was that the question was ambiguous, and I don't want you or any other witness to answer any question that is ambiguous. I want the question clear before the answer is made. Is the question asked ambiguous to you?

The Witness: No, sir; I feel as if I understand it.

The Examiner: Do you need any other facts, other than what have been given to you, to intelligently answer that question?

The Witness: If I understand the question correctly, it is how many cattle I could have sold more than I had, under market conditions on Monday, June 5th.

Mr. Miles: Not more than you had, Mr. Strachan,—just omit that. You may have had one load or a thousand. Just how many could you have sold?

[fol. 969] The Witness: I cannot answer that question intelligently.

Mr. Miles (continuing): All right. You read the statement in the papers, the Drovers Journal, did you?

A. At the market?

Q. Yes.

A. Yes.

Q. Read as much of it as you thought necessary?

A. Yes sir.

Q. I will ask you this: You were present several afternoons during this hearing, were you not, when you had been subpoenaed as a witness and we did not reach you?

A. No, sir.

Q. Were you ever present at any time during the hearing in response to our subpoena?

A. Once. I was subpoenaed at 2:30 and waited until 4:00. That is the only time I appeared at this hearing.

Q. Do you recall at that time whether a similar question was propounded to a witness on the stand as have been propounded to you?

A. In regard to that paper?

Q. No, in regard to selling possibilities.

A. No, sir; I think most of the testimony I heard was in regard to contract cattle or something in that respect, about western cattle. I happened to be visiting with somebody else there and picked up a part of it or heard it at times, but nothing in that respect.

Q. And did you get any suggestions from anything that transpired during the time you were here that when counsel made an objection, that that was a question which should be shied off from?

A. There is nothing——

Mr. O'Bryan: Now, I object to that statement.

Mr. Miles: It is a question.

Mr. O'Bryan: Of counsel for the Government and take [fol. 970] exception to it. Counsel for these Respondents, or these Respondents, that this counsel is not making any objections or has not made any to have the witness shy off from the questions asked, and I think the record will

clearly indicate that every objection made by counsel for the Respondents has been a perfectly proper, legal objection and simply because counsel for the Government cannot get the questions answered that are impossible to answer, there is no reason to cast aspersions either upon the witness or counsel for Respondents.

Mr. Miles: No aspersions cast upon either one.

The Examiner: Well, Mr. Miles, as I understand it, the witness has stated that nothing has occurred to influence his opinion, or the answer to these questions. Isn't that your understanding?

Mr. Miles: Why, up to the present time, his answers were clear. Now, this one question is before us.

Mr. O'Bryan: I am not objecting to a question. I am taking exception to the question. It is perfectly all right for the witness to answer the question, but I am taking exception to the form of the question and intent of the question as I understand it.

(Whereupon the question was read.)

The Examiner: You may answer.

The Witness: There is nothing that I heard in the hearing that would influence me either way.

Mr. O'Bryan: You might let the record show, that in my opinion any witness who hears an objection will naturally listen to the objection, and see that his answer is clear and that it follows the facts. That is nothing but human nature.

Mr. Miles (continuing): Mr. Strachan, you used the figures 5000 head of cattle; would that indicate, in your mind, that you believe you could sell 5000 head in a day?

A. It was just a ridiculous remark on my part.

Q. Well, had it been 1000 in a day, would it——

Mr. O'Bryan: I object to this line of argument. The witness has answered these questions perfectly clearly [fol. 971] and this is simply argumentative and loading the record along improper, immaterial questions, which are based solely on guesses. It certainly is improper direct examination.

(Whereupon the question was read.)

Mr. Miles (continuing): In your opinion, could you have sold them?

Mr. O'Bryan: I object for the same reason as previously stated.

The Examiner: Objection overruled.

The Witness: I am sure I do not know.

Mr. Miles: I think that is all.

Mr. O'Bryan: That is all.

Government Exhibit No. 49 (Witness Bachman), market agency cost study, 1932, was received in evidence.

Government Exhibit No. 50, the Salaries Questionnaire, market agencies, 1932, was received in evidence.

Government Exhibit No. 52, being government cost study (Witness Bachman) of order buyers, 1932, was received in evidence.

Government Exhibit No. 57, Salaries Questionnaire (Witness Bachman) 1931, was received in evidence.

Cross-examination:

I stated that I do not attempt to determine what reasonable costs are or what reasonable income is.

The purpose of this cost study is to draw up information in such a way that it will be of assistance in determining [fol. 972] what reasonable income per unit or reasonable expenses or cost per unit are.

The method which we used here, single deck experience, in converting truck-ins and speculator receipts to a carlot basis, would make the unit cost for a car lower than if the combined straight rail single or double deck experience had been used.

The cost to firm No. 58 to sell one head of hogs,—that firm received or handled a total of 64,913 hogs under all methods of arrival. The total expenses leaving out for the moment the interest on capital was $14,959.34. The per head cost would therefore be the division of the number of head into the total expenses, and would be $.2305 per head. That is not the cost of handling a truck in animal. It is the cost for all animals in composite. The differential study on page 433 shows the per head cost of truck ins. The amount shown there, without the interest on the capital, is $.2729. I got $.2729 by dividing the number of truck in heads—36,271 into the gross expenses which have been allocated to truck-in volume. I got the gross expenses allocated to truck in volume by taking each classification

of expenses shown on that sheet in total and distributing them to mode of arrival, as explained heretofore, and took the experience of that firm on carload hogs and then determined the number of equivalent carloads to get $17.74. To get $17.74, 558 car equivalents were used; however, for [fol. 973] truck ins we also made a calculation for the head. I, personally, do not believe in reducing anything to carlot equivalent. I think the head basis is by far the better basis to use, but we had here a carlot tariff and we have got to test that carlot tariff. As to whether this is a test for carlot tariff, and not a test for drive-ins, I had no way of knowing, whether or not the carlot tariff was going to continue in the future. I had to assume insofar as it was in effect that it would be continued in effect after this rate hearing, and for that reason made the car unit study.

In order to take my figures and tell you what the cost of salesmanship is at Chicago, actual, in the case of a straight carload of cattle, I would have to recap all of the figures shown under cost per car, number 1, straight rail, single ownership. In the case of firm 58, page 336, that amount shown is $5.35. I would have to go through all of these firms and combine the gross selling cost and combine the car or head volume and divide one into the other. I have not done that. I don't know the difference in selling the straight carload of cattle in 1931 and 1932. I cannot determine that fact by an examination of any of the figures that are in this record, without extensive calculations.

With reference to the business getting and maintaining, the experience of the firms under audit with reference to that cost, the calculations will be found on pages 103 to 105. The experience of firms vary; the average for the market, that is, taking the commission men only, and com- [fol. 974] paring the business getting and maintaining salaries and non-salary expenses together, comparing them with the gross income, shows the percentage average for the market of $19.47.

The firms at Chicago handled slightly over 14% less business during 1932 than 1931.

For 1932 the total expense after adjustment is $3,121,363.82; for 1931 the expense was $3,591,908.03. The percentage in decrease in expense was slightly over 13 per cent. After adjustment all the firms included in my cost study made a total of $149,470.99 in 1932, and made $226,232.73

in 1931. That includes 103 firms for 1932, and in 1931 I think it was 100.

The average per firm would be about $1,450.00 for 1931. It would be about $2,262.00 average per firm, and using 1931 and 1932 as a basis for the experience at this market, it shows both declining volume and declining profit under the existing schedule of rates.

For 1932, firm No. 45, the cost of salesmanship, that is selling and buying, is $8.09 per car; for 1931, $9.82. The owners' salaries for that firm in 1931 were $16,159.94; and in 1932, $13,033.32.

The business-getting and maintaining cost for firm 45 for the year 1931, cattle and calves, the salary allocation to soliciting was $8,295.11, and the business getting and main-
[fol. 975] taining expense, non-salary, the total amount allocated for that was $6,363.22; total, $14,658.33. The non-salary per carload was $1.69; salary $2.21; total $3.90, and for the same items, per car, for 1932, for the same firm was $1.66, non-salary; $1.34 per car salary; a total of $3.00 per car. Ninety cents less was spent for business-getting and maintaining by that firm in 1932 than was in 1931.

The same cost with reference to hogs, firm 45, business-getting and maintaining salaries, 1932, was $2,257.31, or $1.74 per car; non-salary business getting and maintaining expenses, $1,829.33, or $1.41 per car; total, $3,086.64, or $3.15 per car; for 1931, soliciting salaries for firm 45 for hogs, $2,510.80, or $1.92 a car; non-salary business getting and maintaining expenses, $1,777.23, or $1.36 a car; total $4,288.03, or $3.28 a car.

Q. Now, what do you have to indicate whether or not this firm in expending $1.74 and $1.41, making a total of $3.15 in 1932, expended more money or less money than was necessary in the proper conduct of that business?

A. We made no investigation to determine whether the amount so spent was proper or improper.

Q. Is that true also of 1931?

A. Yes, sir.

I would consider that fairly consistent in the case of hogs; they are sufficiently close together to be considered as consistent. In 1931, firm 45, the firm in question, had a total of 1311 cars of hogs, containing 126,531 head. In 1932 1,299
[fol. 976] cars containing 117,651 head.

I would figure a carload for that firm in 1931; I mean by that, the carload equivalent of 73 head, and for 1932, 65 head.

Mr. Boyd (continuing): Have your cost figures, in any case, been followed by the Secretary in arriving at salesmanship costs?

(Whereupon the question was read.)

Mr. Miles: Objected to, absolutely immaterial what the Secretary has done in the past cases.

The Examiner: Objection sustained.

Mr. Boyd (continuing): Did you testify that, in the Kansas City case, he did not use it, is that correct?

A. He did not use our unit determination of salesmanship.

Mr. Boyd: And you do not know of the cases that he did, where he did use your cost study?

Mr. Miles: Objected to.

The Examiner: Objection sustained.

Mr. Boyd: Mr. Examiner, you permit him to answer what the Secretary did not do and now you refuse to let him answer what he did do, is that correct?

The Examiner: Well, the Examiner has had trouble with these questions, trying to separate them into what the witness is testifying to from his own knowledge and opinion and as to what the Secretary may do. Now, from now on, when the question is not clear so that the Examiner can rule clearly, he is going to sustain the objections.

Mr. Boyd: Well, I want to get it clearly now, that under your ruling, we are permitted to learn what the Secretary did not do but we are naturally very anxious to learn what he did do and you won't let us find that out.

The Examiner: If it was that way then it was because the question was not clear to the Examiner and he gave you [fol. 977] the benefit of the doubt. If he had construed the question as dealing with what the Secretary is going to do or what is in the mind of the Secretary, he would have sustained the objection to that.

Mr. Boyd: Well, Mr. Bachmann, do you know whether or not the Department has actually determined and did actually determine, after having used your cost figures, to the

fullest extent desired, what the reasonable costs were for the various functions performed by these Respondents for the year 1931?

Mr. Miles: Objected to as immaterial.

Mr. Boyd: And whether or not the Department has already arrived at its opinion as far as 1931 is concerned?

Mr. Miles: Renew the objection.

The Examiner: Objection sustained.

(Whereupon the question was read.)

Mr. Boyd: Now, Mr. Examiner, I offer to prove by this witness that if he be permitted to testify that the response to that question would be "yes".

The Examiner: Offer of proof denied.

After adjustments were made, the resulting gain for those firms which had a gain was $210,973.85; and the resulting loss for those firms which had a loss shows $66,329.15. The cost study figure is $144,644.70 gain net for all firms; and that does not include salaries of owners nor adjustments in salaries of owners except in the case of the firms that made a profit. In the case of those firms which made a profit, we took the profit in as owners' salaries, and in the case of those firms which showed a salary or drawing account for the owner that is included. That is about four and one-half per cent of the total commissions collected. [fol. 978] The tariff provides a rate of 40 cents a head for selling calves. I cannot give you the cost of selling a calf on the market according to the figures I have prepared. Assuming that the tariff provides 75 cents for cattle, single ownership, unmixed carlots, 20 head or less, with a minimum of $17.00 and a maximum of $21.00, I cannot tell from the cost study the average cost of selling a carload of that type of livestock on the Chicago market. For the purpose of our cost study, the cattle and calves have been combined. The tariff provides different rates for cattle and calves; I did make it up as a consolidated proposition because they are handled together. I mean they are handled together very frequently. As to whether or not they are sold together according to the testimony I have heard in this case, in most cases I would say that a different individual sells calves and another individual sells fat steers, but I understand that the same salesman sells calves and butcher

stuff, and my understanding is that calves come under the classification of butcher stuff. As a general proposition, I understand that, generally speaking, calves arrive at the Chicago market in small numbers compared with the total number of cattle in the car. The cost study shows the comparison of cattle and calves, that is, the total number of head of cattle and the total number of head of calves. The total number head of cattle was 2,309,287, and the total number of calves being 414,368. Of that number the calves arriving in straight cars were 14,985 single owners, [fol. 979] and 5,513 plural owners. They bear a ratio of about 5% to the total, so that only 5% of the calves arrived in unmixed lots. I wish to correct a statement made just a moment ago. That 5% represents the total number of calves that came calves only. There may be additional calves coming alone in truck-ins and speculators, and of course we have the rail calves. What proportion of those come not mixed with cattle, I do not know. I do not know whether that would exceed 10%. I could not give you information with respect to the cost of selling a single deck of calves on this market during the year 1932 without segregating the calves out of the cattle and making a separate determination on them, by reason of the fact that the tariff carries a separate rate; I have not done that, inasmuch as the calf rate is under investigation, because in my opinion it is almost an impossibility, if not an impossibility, to make a separate determination for calves, as distinguished from cattle, because the two are handled together and also because in my opinion a carload of calves would cost approximately the same to handle as a carload of cattle, and by using carloads, we can determine at least approximately the cost of handling either one of those two units. I reach that conclusion because of a study of the conditions under which operations are conducted and the hearing of considerable testimony on the subject. I appreciate that as to the head, there may be a lesser cost per head for calves than there is for cattle, because they come in greater numbers per car; but using the car and having in mind that the same individuals handle cattle as handle calves, I cannot [fol. 980] see where there could be on a car unit a very great difference in cost for cattle than there is for calves. I understand that calves, according to the testimony, are handled with cattle to the cattle alleys ordinarily, and are

handled different from that time on, the same as if they were sheep. The yardmen who yard cattle also yard calves; the salesmen who sell cattle also sell calves; the office man who makes out account sales for cattle also make them out for calves. Cattle and calves are handled by the cattle department, and I don't understand that there is a distinction between cattle department and calf department. I have not heard the salesmen who sell the most calves testify, but it seems to me just ordinary common sense, common business sense I might say, knowing how small the percentage of calves is to the cattle, that these various firms get, that they are not going to set up a separate individual to handle that small proportion of their volume and incur the cost of doing that.

Government Exhibit No. 56 (Witness Bachmann) Cost Study for the year 1931 was received in evidence.

I have not made any comparison of the income and expenses for the years 1930, 1929 and 1928 for the Respondents in this case. As to whether that could be done by an examination of forms P. S. 3 reports and thereby come to the same conclusions that were reached in the case of 1931, I don't recall how long back we have the P. S. 3's in Washington. At one time it was the policy there to keep [fol. 981] them only for three years. Now, whether that information is still available, I am not in position to say at this time. There were seven cattle salesmen employed by firm No. 45 during 1931; they sold cars or car equivalents 3,760.

I know of no way in which the extra cost of the extra services can be determined.

The Government rested 4:30 P. M., July 7, 1933.

Mr. J. R. McGlashan, a witness, called by the Respondents, testified as follows:

Direct examination:

I am a farmer and real estate man. On my farm I handle cattle, hogs and sheep. I have attended this hearing this afternoon. I am here for the purpose of purchasing sheep. I intend for Mr. Merrion to make those purchases and I

have been waiting for him to be released so that he might purchase the sheep for me. I have patronized the Chicago market as a shipper of livestock for about 46 years. I recognize the fact that I will have to pay Mr. Merrion for making a purchase of the sheep that I intend to purchase on this market for feeding, and I know what the charge is per car.

I believe that the service which Mr. Merrion renders in the purchase of the sheep is worth the amount which he charges. If we get good service as a patron of the Chicago [fol. 982] market for over 40 years, I do not believe that the charges made for the buying of sheep by the commission firms at Chicago are excessive or more than the shipper should pay for the services that he receives. I don't believe that the charges made for selling sheep at Chicago are excessive. I do not believe that they are more than they should be, under existing conditions.

Cross-examination:

I reside at 3933 Clarendon Avenue in Chicago. I am in the real estate business in Chicago. I have been in the real estate business off and on for 30 years. My farms are located at 215 Harlem Avenue. In other words, in the southwest part of Cook County and the east side of Will County; they adjoin. Farming is carried on quite extensively in Cook County. I have been engaged in farming about 55 years on the same farms; not all the time. I increased it,—the original farm. As to the extent of my operations, I feed—it varies—anywhere from 1000 head of cattle and 3,000 or 4,000 sheep a year, sometimes less and sometimes more. I buy my livestock on the Chicago market pretty much, and I sell it all there pretty much. I do not raise any on the farm to speak of; we dairy some; we have some calves we raise. I buy most of my feed; raise some of it. I do not spend a great deal of time on the Chicago stockyards market. I have never been in the livestock commission business, or have I had any interest in any livestock commission firm.

[fol. 983] I sometimes finance my own operations and sometimes I do not. I sometimes seek the aid of commission firms in financing my business. Mr. Merrion helps me sometime- to finance my business. He is going to do it on the sheep he is buying today. Mr. Merrion also sells

my sheep for me. I deal with another commission firm on the Chicago market when I have cattle. When I have sheep I do not deal with another firm very often. I would not say that I was familiar with the factors that enter into the cost of the operations of commission firms on the Chicago market. As to the items that make up the expenses of buying or selling livestock on a commission basis on the Chicago market, I know in a general way only. All I know is they have their office and their soliciting and help and yard and take care of your stuff. I do not know what any firm spends for any one of those items. I could not say that I know the salaries that are paid to salesmen on the Chicago market. I could not give the salaries paid to any of the employees of commission firms.

I am going to have Mr. Merrion buy for me at this time, three, four or five thousand. If we can get them in one bunch, we will buy them at one time. Sometimes we buy them in lesser amounts. In answer to a question on direct examination, I stated that I regarded the rates for buying and selling livestock on the Chicago market as being reasonable. I base that opinion—if I get a good service, a matter of $1.00 more or less for selling them, if you get good serv-
[fol. 984] ice, that don't amount to much. I am primarily interested in good service. I want them to get the top of the market for them. Then, I feel that is service. I determine what commission firm I will select to sell my livestock by being acquainted with them and knowing their business abilities. I have been around the yards here for a number of years.

I have never had a commission firm solicit my business particularly; I have had some solicit my business, but that doesn't have much effect on me. I do not ordinarily ship all my sheep to the market at one time. I sort them up and ship the fat ones and keep cutting them out until finally the tail end will be fat and we will ship them all. It depends on the market too. I am acquainted with quite a few of the commission firms on the Chicago market. As to why I do not patronize all of the firms, I patronize the one I think I get good service from; yes, my opinion with respect to the reasonableness of the commission rates is based entirely upon the fact that I am satisfied with the service I get. I do not yet know from whom I will have Mr. Merrion buy the sheep I am going to purchase at this

time. We will buy them from anybody we think we can get them from worth the money. It all depends on where they happen to be and what they are. The ownership does not make a bit of difference to me. I want them empty, if I can get them. My experience in that respect has been varied; it has varied very materially in the past 40 years. Sometimes I get them full and again I get them empty. I [fol. 985] buy sheep from traders. Traders will fill them if they can and you know it. As to whether I get the empty ones from commission firms, that depends; sometimes you buy them out in the feed lots and shrink them and sometimes you buy them off weight, off feed so long, and that varies materially. As to whether I have ever made any study of the conditions of the Chicago market as to whether or not fewer firms could handle the livestock, I suppose they could if they were all consolidated, but I don't know how that would work.

Redirect examination:

What I meant to say in answer to Mr. Dagger's question was that the amount of money that I pay the commission man I deem to be no more than the service is worth to me when I employ him; without regard to what the service costs the man that renders it. That in paying the charge that I pay, which was fixed by arbitration in 1923 in Chicago, that that charge as it is made today, I do not believe to be excessive; that is my viewpoint with respect to cattle as well. I also ship hogs. I also feel that the rate of commission for selling hogs, cattle and sheep are satisfactory and not too high.

Recross-examination:

My opinion is that they might have less firms, but I would not want them to have only one firm. Of course, it all depends on the number of livestock coming to the yards whether they would need more or less, in my opinion. If [fol. 986] I were to pay less commissions than I am now paying and get the same service, I would not object a bit. It is the general tendency of human nature to pay as little as you can; that is the way I am built.

MR. WILLIAM B. SWINEY, a witness, called by the Respondents, testified as follows:

Direct examination:

I live at 4546 Ellis Avenue, Chicago. I am engaged in the livestock commission business. The name of my firm is Swiney Bros. and I am one of the brothers. I am one of the partners. Charles M. and Thomas E. Swiney are the other two. The partnership has been in existence I think from 1907 or 1908. I would be called a steer salesman, but that does not comprise nearly all of the work I do or my duties.

When I first came into the yards as a sight seer in the late Summer or early Fall of 1875, I came over one day with my father, and I went to work in the yards on the 19th day of January 1881 as a messenger boy for the Stockyards Company. I worked a little over a year at that job and quit for awhile, went back with them again in a similar position and worked a year or a little more, and quit again. Then, I was away from here more or less from that time until I think it was February 1889. I came back home and have been here continuously ever since. I was out of the business for eleven months but back into it again. When my father was in the business, I worked [fol. 987] for awhile, but after his death I was with his old firm for practically a year and then we organized the firm of Swiney Bros. & McGahen. That firm was in existence until the first of November 1903, when I went into business with Mr. H. S. Bunker, under the firm name of Bunker and Swiney, and after that my brothers came into the firm, both Charles and Tom. After Mr. Bunker's death in 1906, I continued that business as per contract and later my brothers came into the firm and we continued under the name of Bunker and Swiney for several years and then changed the name of the firm to Swiney Bros. I first started to sell cattle about 1890. I sold odds and ends, calves, milkers, springers and bulls. After I went into business the first of 1892, I sold all kinds of cattle until about 1897 or 1898. From that time on, I have been the steer salesman, selling steers, the good yearlings, mixed yearlings, heifers and steers, and good to prime heifers. I am now engaged in the sale of steers, mixed yearlings

and good to prime heifers, and stockers and feeders. T. E. Swiney sells the butcher stuff, and C. M. Swiney sells the hogs, and he has a helper. We have three cattle salesmen with the firm, two besides myself. B. J. Knoerle sells the bulls, some calves and all the bulls, and helps me some on odds and ends, steers, and occasionally sells a bunch of steers.

Our yardmen work wherever there is work to do. In fact, everybody connected with the concern has to help where they can. The yardmen work with hogs as well as [fol. 988] with cattle. The salesmen help with the work as well as the yardmen. We have what we might term two regular yardmen.

The yards were opened Christmas 1865. Based upon knowledge which I have gained through associates at the stockyards, prior to 1865, there were several yards here in Chicago. I was never at any of them and don't know that I could tell their exact location, but, as I understand it, there was not much of a market here. To begin with in Chicago men used to drive their cattle here from away off great distances, sometimes herd them around the prairies for an indefinite time until they could dispose of them, and later the market developed and the commission men, commission firms were organized to handle the trade and it grew from that. Originally, men who drove their cattle to market sold their own cattle unless they knew somebody who was a little better posted and had been on the ground and was more familiar with the prospective buyers and could help them dispose of their cattle, but, in that case, whoever helped them assumed no responsibility in any way whatever as to salesmanship, collected for the cattle or anything else, but probably was paid some remuneration in some cases for the help he had given a man in disposing of his cattle, in negotiating a trade. I presume that is really the origination of the commission business.

There have been so many changes that I am rather at a loss where to begin. When I first came into the yards myself, there were well established commission firms, but there [fol. 989] was no well established rules of conduct, of business conduct, until the livestock exchanges was organized in 1884. I have some recollection of that, although I was not a charter member. My father was, however. And,

from that time on, there were regular rules of business conduct established and maintained by the Exchange and the business grew. In those days, shipments were larger, fewer men could handle them, handle the shipments. I never sold mixed loads altogether myself, that is, steers and cows and bulls and heifers and everything, but I have been told that back at the beginning, full carloads of mixed cattle were sold together. But, from the time I commenced, and some time previous to that, the different kinds of cattle were sold separately; sometimes the cows and heifers together, I presume, but not all sold together, cattle of every description.

As to the situation with respect to buyers on this market, when I first came into the yards, we had a wider outlet; we had a big export trade at that time, there were export buyers, there were buyers that came here from New York, Philadelphia, Pittsburgh, Lancaster, Boston, Buffalo, and I might say, Cincinnati; they either came here themselves or had agents here. While there is some order business here yet, it is not as extensive nearly as it was in the old days. There is not the competition. The changes that have occurred since 1920 to 1923, after the War, compared to the present time,—at that time the stock was coming more in larger droves, more straight shipments, were easier to handle, not nearly so much sorting, not anywhere [fol. 990] near as many different ownerships, comparatively no co-operative shipments at that time, if I remember right. I am not sure of the date though, and it is much harder to handle the same kind of stock now, if that is what you mean.

The custom has grown to sort cattle more and get them into so many more different grades. There are so many buyers that will buy just one or two particular grades, whereas years ago the buyer might buy and would buy a variety of grades. I guess we meet the best buyers as a class that there are in the country.

The slaughterers of cattle who have buyers on the Chicago market are the oldest, most experienced buyers. Of course, they develop young buyers here but in all the most responsible positions they have their most experienced buyers here while they will sometimes send a man that they developed to take charge of the buying force in another market, but I cannot recall of an instance where they sent

a head buyer to another market. They send a man from the ranks that they have developed here to another market as a head buyer.

Chicago is the largest market in the country, and, as I understand it, nearly every market in the country waits to know what receipts are here and what Chicago is doing before they operate very much.

I arrive at the stockyards Monday mornings about 6:15 [fol. 991] to 6:30 as a rule. Other mornings, from 7:00 to 7:20. For thirty years or more I was here at 5:30 or 5:40 or 6:00 o'clock every morning except Saturday mornings.

With regard to the difference in the mode of arrival of livestock, there has been a vast change in that. Some years back, we had no truck business at all. Now, a considerable portion of the stock that arrives here comes by truck. Some of the railroads just lately have changed their rules and their ratings so that some short loads or light loads of livestock come by rail at a special rate, a rate that is different from the regular carload rate.

At the time these rates were fixed by the arbitrators, in 1923, there were a great many so-called livestock shippers shipping livestock to the Chicago market. They have disappeared in various directions; they were forced out, I would say, largely by the co-operative organizations in the country. With the advent of the truck, it is now possible in the territory served by trucks for livestock in small quantities to be shipped to the Chicago market, and we have a small number of head per owner, and the trucks I think have had a tendency to eliminate in certain territories of the associations that once shipped the livestock by rail.

As to the tendency toward complicating the work done by salesmen and livestock commission men generally in the handling of the business arriving by rail, it would take just [fol. 992] about as long to bring over a full carload of cattle, we will say, as it would to bring over—or just about as long to bring over a part of a load of cattle of two or three cows and three or four calves from where they are unloaded, as it would to bring over a full carload of cattle. Then, the truckers pick up stuff at the farm and take anything from a single calf on up until all their truck will hold;

consequently there is generally a large number of owners for the amount of stuff they haul.

In a general way, I believe that sales effort required in disposing of truck business is greater than it was when that business arrived by rail. The cattle have to be sorted for grade and class, then they have to be sorted for ownership. There is just that additional sorting and that additional selling, and to take a man into a pen to show him some cattle, it will take just about as long to sell him one or two as a pen full. Not quite as long maybe, but it takes a trade. It is harder to sell. The more lots you have, the more sorting, the more bunches, the more work it is, not only the sorting and yarding and in handling, but in selling. And those difficulties by reason of that fact have been increasing since 1923. I do not believe that condition has been brought on by the commission men. The question of the mode of arrival has been beyond the control of the live stock commission men.

Buyers seem to be specializing, not the buyers exactly, the employers of the buyers, in the case of the packers, to [fol. 993] have men to buy each particular grade, whereas years ago certain buyers would buy several different grades. And when you had a buyer, you could go along and show him different grades and work faster and accomplish more than you can now when you have to get a buyer for so many different kinds and classes.

After the animals have been properly prepared for showing and for sale, in the first place, we try to determine as near as possible about what each load would have brought the day before, take into consideration what information I have regarding receipts, conditions, whatever I know, or hear about the beef trade, or anything that might have any bearing on the market, and govern myself accordingly. Then, as buyers come, show them the cattle, price them, try to sell them.

The demands for certain kind of cattle vary continuously on the market. I would not know how to strike an average in asking prices at this market, an average condition confronted by me when I leave for the yards in the morning; I have never found it. I arrive at the asking price by comparison—what I sold the day before or what I have seen my neighbors sell. In the long experience I have had on this market, I think I have learned some things all the time.

I may not be as good in some ways as I was once, but I think in other ways I am probably better. A man never quits learning, if he wants to learn. In most cases, I am able to tell when I arrive at the stockyards and find and look over the animals that I have to sell who will be the [fol. 994] best buyer for those cattle. Swift & Co. has a man that buys shipping cattle. If I will have a certain grade of cattle of desirable weight for him, I figure he is a good prospect; it will suit the Armour buyer for the same class of trade; and the city butchers here use certain grades of light cattle. The Illinois Packing Company, I know about what they can use as a rule, and others of the city butchers, and I know that it is no use to show a man that wants good shipping cattle, common cattle. I know it is no use to show a steer buyer heifers, and so on. I know pretty well what they want, what they will buy. We have generally three types of buyers on this market; those that buy for local packers, order buyers, that buy for distant slaughterers and the trader who will buy any class of livestock. There is the order buyers, you can classify the packers into two classes now, the buyer that buys the shipping cattle and the buyer that buys the house cattle; or for local slaughter; then there is the trader, of course, who will always buy anything he thinks he can use to advantage and make a little money on or mix with other cattle and sort to advantage; there is the stocker buyer who buys stockers and feeders. I have seen stocker men buy half fat cattle, in fact I have seen them buy cattle up toward the top here sometimes, not the stocker men, but men with orders for cattle to go back to the country for short feed. As I say, there is always a variation, always a change. It never stays put in one place. As to how I meet the changes that [fol. 995] are taking place, that is hard to explain. I have got to sense it by instinct in some cases, by various methods, and sometimes a fellow does not see it quick enough either.

I would say largely that the action of the buyers gives me a knowledge of change that causes me to change my methods. If a buyer does not want to buy, shows no interest in what you have, if you force a bid from him it is a low bid, if he continues to act along that line, that does not indicate that he is a very hot buyer, whereas if he is up and coming, wants cattle and is eager to bid you and keeps bidding until he has got you guessing as to whether you

want to sell them or not, it is some indication of activity in the trade, particularly if several act that way.

I would say three principal competitors on the market are the city butchers, the packers and the order buyers and the traders.

It is largely a guess when we start to sell cattle in the morning what the individual demands will be for the class of cattle that we have for sale. If we know that the beef market is fairly good, the receipts have been moderate and that somebody has been out looking for cattle like the day before, that is some indication we might expect a stronger market. If a good many cattle are left over, some on account of very low bids and some on account of no bids, and receipts are fairly liberal, unless there is some sudden unexpected change for the better, we cannot expect a very good market.

[fol. 996] The order buyers and the packers give us lots of advice, but it is all bearish. They never advise us that the market is going to be higher. If they don't want any cattle, they don't hesitate to tell that, but if they do want cattle they don't broadcast it. I have known cases to exist where they said they did not want cattle at 10 o'clock and did actually buy cattle at eleven. And perhaps the same cattle that I had asked them if they wanted at ten.

It is the purpose and the object of the buyers of cattle on this market to buy them as cheaply as it is possible to buy them in competition.

When I see a drove of steers or a carload of steers, in the alley in the morning, I know of no way in which I can determine the number of buyers that I may have to show that load of steers to before I have found a buyer who I believe will pay their market price, but there is a great variation there. The first buyer that comes along might happen to be the best buyer, and it might happen that the last buyer at 1:00 or 1:30 will be the best. We cannot tell with any degree of certainty how many men we may show them to or who might finally buy them. We know in a general way, or know pretty closely what class of buyers they will suit, but there is even a variation there. The buyer may want one class of cattle one day, and by the time they have their figures on that day's buy, they may find that they have got all that class they want, and he won't be such a [fol. 997] hot buyer the next day on that same class of

cattle. There is a constant variation all the way through. Sooner or later I make up my mind that some buyer has offered me what I believe they are worth, and I naturally sell the cattle to that person, and it has happened that I have worked my head off and could not get what I thought they were worth but had to sell them because it was all I could get.

During most of the time during the last year and a half, the market at Chicago for cattle has been very sordid most of the time. Starting last July, I think, the market started up and advanced considerably and all at once it commenced to slump again, and it has been an erratic market. Prices at times have been very unsatisfactory, but compared with other farm commodities, most of the time cattle have sold higher than anything else. That is, hogs or grain. Sheep and lambs I leave out because I do not know anything about them. I was selling cattle on this market in 1923, and I have sold them every year since that time, with the exception of eleven months. I do not see how the service I render my customers in selling livestock at the present time, under present conditions, is any less valuable to the man I serve than it was during 1923. I know there has never been a time in all the time I have been selling cattle that I worked as hard for the country as I have during this panic time that we have been through or just going through. Most of them were blue, or either broke, or half broke, and they needed all the money they could get. I smile because I [fol. 998] happen to think of something that might illustrate what I mean if I can tell it. I was downstate some time ago, visiting some friends and acquaintances, and I said to one fellow, "What the heck is the matter with you fellows, you won't ever write me and I know you want some information I can give you, but you don't ever write me." "Well," this Swedish man said, "I tell you when it rains we are too blue, and when it don't rain we are too busy," and there never has been a time that I worked as hard for the country people as I have for the last two years or so, two or three years, and I don't know why my efforts are not worth as much or more than they ever were. Prices are much lower than they have been at times. The responsibility is just as great and just as much knowledge and close attention and hard work are as necessary now as ever; the work is harder and harder to do every year.

Present trend would indicate that it will be harder and harder as time goes on.

So that if prices have declined since 1929, the efforts I have had to put forth in this disposition of livestock on commission has been proportionately much greater. While so many of these men were old friends, even at that from the feeling that you might have for old customers and old friends, there is a knowledge that they need every penny they can get and you just want to get it for them. We always do work along those lines because we are on that side of the market. I am not always generally well ac-
[fol. 999] quainted with my patrons personally. Sometimes old friends bring new ones, and sometimes I do not know them until they come in with some stock.

I do know personally most of the people who ship here to my firm, and they consult with me on all matters and questions in handling of cattle and I furnish them with what advice I can with respect to their business. And they expect me to do it.

I do not find that there is any complaint among those men as to the amount of money they are spending for my service. The old livestock feeder and shipper has very little to say about that. Our men do not kick about that. There is once in a while a man that is naturally a kicker and he will kick about anything and everything that he is not satisfied with, but it is way in the minority. There is, I would think, one percent.

In the solicitation of business, we try to keep the customers we have by giving them the best service we can, treating them right, and getting new business where we can, anywhere we can, and any way we can, any opportunity we have. By "any way we can", I mean in a good, square, legitimate way. We sometimes have no contact with old shippers beyond keeping them posted on the market, by market letters and sometimes personal letters. Sometimes we may go out and see them. I personally make soliciting trips to the country. I frequently leave Thursday night and come back Saturday night, or if I am motor-
[fol. 1000] ing, I drive back Sunday, spend two days in the country and I sometimes use a car after I arrive at a point in the country by rail.

I determine what trips I will make to the country in various ways. Some man or two or three in a neighbor-

hood may want me to come down and see his cattle and advise with him, or we may learn of a neighborhood where a considerable number of cattle are on feed. We have some acquaintances and some reasons to believe that a trip to that part of the country might be profitable, and sometimes a trip is made just to see a few especially old friends more than anything else, and sometimes in doing so we make new acquaintances and there is no rule that governs that. Well, yes, we try to avoid creating expense making trips that I think will not be profitable to the company.

I believe we could make more trips to good advantage if we could just be successful enough in picking the places to go. Sometimes a man is disappointed in results, the result of any trip. We never have apportioned any particular sum of money to business-getting and maintaining. There is no way to tell what our gross commissions will be for the ensuing twelve months of each year. We do not know what the gross commissions will be, and if, we will say, for instance, we would allow a certain amount of money regardless of the percentage, any certain amount of money, so we would spend that amount of money for traveling; [fol. 1001] we might run way under or over that; I do not know how anybody would determine what they ought to spend.

If the department were to allow us ten percent for solicitation, there is absolutely no way that I believe that I could decide how much money I should spend and keep within the ten percent, when I do not know and cannot say what our gross commissions will be.

A man or a firm that starts with the idea of spending so much money, is going to spend some of it foolishly, and I would not know how to determine what percentage ought to be spent for traveling. I have no idea of going out to the country and have no trip in mind right now at all, but somebody may turn out, and I may want to go if I am not detained here, tomorrow night or tonight, or any time at all; something might turn up where two or three men from the same neighborhood might write in or phone in or something of the kind, and we might determine that it would be very good business for me to go down there. On the other hand, the cattle might come from this neighborhood or that neighborhood, and there would be no particular occasion for going to any one of those neighborhoods to do any

soliciting, because cattle are coming anyway; we're getting all we expected to get, and I do not know any way to determine what percentage or what amount of money should be spent for advertising. Some people naturally travel and spend more than they should. It has seemed so al- [fol. 1002] ways, and others might spend more to pretty good advantage. That is largely a matter of opinion.

And it may be that in the case where I believe that people spend more than they should. If I were apprised of all the facts and placed in their position, I might believe that the expenditure after all was warranted because I cannot know the circumstances which cause the other man to do the things which he does in that connection.

We do not loan so much money in the commission business to growers of cattle. Loaning money helps some in drawing business to a firm, but the most of our business is done by reason of the services we render to our customers, and the reputation that my brothers and I have established over the long period of years we have been engaged in the business. Our business would go down if we maintained our service at the same high standard of excellency and our reputation remained the same for rendering good service, and we formed no contacts by solicitation, market letters and similar activities. As to whether I think it would be fair for anyone to say that the amount of money that we expend is wasteful or exorbitant, we have spent more money in getting and maintaining business than it costs some other firm to get and maintain a similar volume of business; unless he knew as much or more about our business than we do, I do not see how he could arrive at any conclusion about the matter. As to whether I think the money expended by us during the year 1932 was only a sum [fol. 1003] of money which we deemed important and necessary to spend for that purpose, I think it was advisable; that is why we spent it. There was no way to tell in advance what the results of those expenditures would be in the matter of business-getting. I may say, no, there were no wasteful items of expense in that connection in my judgment during the year 1932; there was not intended to be, and while some trips did not result as profitably as we would like, I don't think we wasted any money.

I do not think we have a larger personnel or that Swiney Bros. have a larger personnel than is necessary to prop-

erly conduct the business of Swiney Bros. on the Chicago market; if I did, we would cut it down.

As to whether I believe that in 1932 we spent more money than should have been spent in the exercise of sound judgment in the operation of the business of Swiney Bros., possibly, but if we did, there was no way of stating it at the time. I cannot recall any such expenditures at the present time which I believe, in the exercise of good judgment, would not have been spent by a person of good sound business judgment. I believe that the firm of Swiney Bros. was operated as economically as the circumstances permitted during the year 1932.

As to the rates charged, I think, in many cases we earned far more than we got, and in no case do I think our charges are excessive.

[fol. 1004] Cross-examination:

At times when we go out soliciting, we go at the request of some potential shipper, not always. At other times we go where we believe there is some business. And on those trips I tell them very often what I think the cattle will bring at the present time. I sometimes advise them with reference as to when to ship, but I don't like to do that.

As to the form in which we receive requests to come out and appraise livestock, a dozen men may say something different. They might say, "I wish you would come down and see my cattle and tell me what you think of them, or if you can come down in our neighborhood, come and see my cattle and I will take you around to see some other cattle".

It is not always understood that where I go to look at cattle that that shipper will ship his cattle to us. I would sometimes say that I would come if he would ship the cattle to us, but not very often. When I go down to look at livestock sometimes I am told that some other commission man has been there. If I knew at the time a request was made to come and look at a farmer's livestock, that some other commission man had already been there, in that case he would ask me to come and see his cattle, I would take it he would rather have my opinion and his intention was to ship his cattle to our firm. We make frequent requests of people to ship to us; and we make such a request when we know that the shipper has in the past been shipping to another

[fol. 1005] commission man. We do attempt to solicit business away from other commission men, and I think others attempt to take our business. I am quite sure they do. I have told you in substance that shipments to the Chicago yards have decreased in volume. If anyone were to try and maintain the same volume of business we had when receipts were much heavier, they would surely have to solicit more and work more for business, but we do not hope to do that.

Considering the fact that the volume of business has declined at the Chicago market, and whether I think I should spend more money to solicit business or less money to solicit business, I don't believe that there is any appreciable difference in the amount of our solicitation expenses now than there was years ago, so I don't believe, without having the figures at hand, we are spending any more money, or if any, very little more than we did when the volume was heavier. I cannot tell you specifically just what receipts, that is, what shipments to our firm we have gained during the past year due to our solicitation, or to our advertising. Solicitation is limited by the rules of the Exchange. The rule limiting solicitation was ratified by a vote of the Exchange—I mean by the various members. I could not tell you when that was. I could not tell you if I was present when it happened.

Assuming that the expenses for solicitation of each commission firm was limited in some way, that is, cut in one-half for each individual firm, I don't know of any way to tell whether that resistance would affect our business. Natu- [fol. 1006] rally some firms are larger than others; they have different facilities than others; naturally their expenses along certain lines, along any lines, would be heavier than others, and why not ask if some certain railroads should not be limited to a certain number of miles the same as some little railroad or anything of that kind. I cannot get the idea. Taking the proposition: Just how I would determine the amount which each firm from the yards should be allowed to expend for solicitation. I would not attempt to arrive at it; let every commission firm decide that for themselves.

I believe the commissions should be uniform. I believe every firm should regulate their own expenses. Back years ago, there was no Exchange; then, after we had an Ex-

change, each firm was allowed to have three traveling solicitors. That proved to be expensive and a burden. That was done away with, but members of the firm and salesmen were permitted to make trips to the country soliciting, and it is necessary to go to the country sometimes—necessary for members of the firm. It is advisable. They don't do that in order to see how much expense they can run up. As far as the expense is concerned, any man that knows 100 per cent what is wasteful expenditure and what is not, he is a cracker-jack; I have never yet seen such a man. The Exchange did limit soliciting within itself. The effect was to cut off expenses. And that same limitation was imposed upon every firm. It depends on the circumstances when [fol. 1007] truckers bring in shipments of livestock to our firm, whether we solicit the business from those truckers. We don't run around to every trucker soliciting his business. Sometimes when we meet a trucker and talk to him about livestock and about sales, we ask him to bring other consignments to our firm. I do not solicit seconds, or speculator livestock to sell.

I do not find the cattle are as easy to sell if they come from traders as if they come from first hands. I like to sell traders' livestock when I can. I have refused to take some, and I have taken some, but we sell very few of them.

I know that the services we render are not less valuable to the shipper today than in 1923. I evaluate our personal services to the shipper, giving him just as good or better service than we did then, and it is possible for us to give just a little better service at times because your volume is less and you work just as hard as you ever did, and maybe harder. When you are working just as hard as you can, your services must be just as valuable.

We confer upon the shipper the ability to get the highest figures; that is what we try to get. It is true that today the price of livestock is less than it was in 1928 or 1923. The farmer gets less today than he did in 1928 or in 1923.

[fol. 1008] In time and service and effort, our services are just as valuable now as they ever were. The feeder, the livestock man, the shipper, his business may not be as profitable as it was then, and it probably is not, but sometimes our business is more profitable than at other times, and I imagine that anybody else's business is more profitable at times than it is at other times; but in our case, that is our par-

ticular business and if we don't get along, why, we cannot blame the farmer or somebody else, we have got to hit the ball and get along. In proportion to the amount of business we handle, it costs more in time and labor.

I am a steer salesman. I personally sell heifers, in addition to steers. My brother Tom and Ben Knoerle sell calves. My brother sells some heifers and cows, canners, calves. Ben Knoerle sells some calves and bulls and some odd steers and occasionally bunches of steers. It is a fact that direct shipments have caused a decrease in the volume of business to the Chicago yards. It is one of the causes for the decreased volume. It is true that the co-operatives have built up a large business on the Chicago yards and induced a large number of livestock to come to the co-operatives. And to that extent it is another cause for the decrease in the business done by the other commission men.

I don't know the number of head of cattle we had in today. I don't know whether we had any truck stuff or not. We had some cars, though. I could not tell you how many. [fol. 1009] I probably sold a load and a half, today; it might have been closer to two loads, I don't remember. I sold some of them about 8:30, some of them about 9:30, some of them about I should say ten or 10:30. I don't know into how many drafts they were weighed. I could approximate that there were two out of one pen, one out of another, two out of another—eight or nine drafts. It is not ordinarily any more difficult to sell a straight load of fat steers today than it was five years ago.

I want to qualify that last answer a little bit. We have hardly as much competition—as many buyers as we had some few years back. Five years ago, there was probably a few more than there are now. It might have been a little easier to sell cattle five years ago than now.

We carried over cattle in 1928. We do not carry over many throughout the course of a month; I don't think we carry over any more than we did in 1928. As to whether in my opinion our firm renders as good and efficient service as any firm on these yards, well, that is a hard one to answer. We may or we may not. It is a matter of opinion among different men. Yes, I have an opinion. I think we handle our stock very well indeed. As to whether we handle it as well as any other firm on the yards, that I don't know. I don't know exactly how well every firm here han-

dles their business. Oh, I don't know if I could sell as many livestock as any salesmen on the yards if I had them to sell.

[fol. 1010] In my judgment sometimes maybe I could sell more livestock, more cattle, if I had them to sell, and sometimes I couldn't. I could have sold more today if I had had them to sell. I don't know how many more. The Chicago yards could absorb more cattle than actually came here today. As to whether in my opinion the Chicago yards could have absorbed more cattle in 1932 than actually was received, that I do not know. Well, if bargaining and bickering, as you term it, if you mean to ask if that is all there is to selling livestock, that is not all. If a buyer tells me flatly that "I am not in the market to buy a single hoof today," I do not attempt to argue with him and get him in the buying mood; I just think if he changes his mind or his orders are changed, he will be around. I do not think we have a larger personnel than is necessary for our business. I regard our salesmen as being the equal of any salesmen on the yards here.

Q. If it be true that other salesmen have actually sold three times as many as your average performance, would you not feel, then, that your personnel is greater than need be?

Mr. O'Bryan: I object to that type of question, if the Examiner please, on the ground that the assumption does not give any facts as to the circumstances under which the assumption is made, namely, the selling conditions or the type of cattle sold, or the buying conditions or the market conditions, and that the question, in itself, is too general and the witness cannot do anything but make a mere guess or he cannot answer the question. There is nothing there on which he can base a proper answer. It is an absolutely improper question.

Mr. Miles: Now, you have been told, under the guise of an objection, that you must not answer the question, it is not binding upon you at all——

[fol. 1011] Mr. O'Bryan: I object to that statement of counsel. I have not told the witness that he must not answer the question. I made a legal objection to the question which is improperly phrased.

The Examiner: Can you answer the question?

The Witness: Just what is the question?

(Whereupon the question was read.)

The Examiner: Is that question clear to you so you can answer it, or do you want a period of time that Mr. Miles has in mind specifically?

The Witness: No, sir, I will answer the question.

The Examiner: The question is clear to you so you can intelligently answer it? In view of what the witness says, the objection is overruled.

The Witness: I don't think we have too much help. If I did, we would eliminate some of the help. I will go still further with you.

Mr. Miles (continuing): You believe, do you not, that your salesmen could sell as many head of livestock, if you had them to sell, as any other salesman on the yards?

Mr. O'Bryan: Same objection to that type of question.

The Witness: I didn't say I believed that.

Mr. Miles (continuing): I am asking you now if you do.

A. I thought you were telling me. I beg your pardon.

Q. Granted. I am asking the question.

A. I don't know how many anybody else can sell or I don't know how many I can sell.

There are a good many different elements in this salesmanship proposition, when you ask a man if his salesmen [fol. 1012] are as good as anybody else on the yards, or if he is as good as anybody else on the yards, there is none of us but what are stronger in some ways than most all of the others, and I don't know of any man that is altogether, in every way, superior to everybody else. Our commission rates are not high enough. The elements I consider are responsibility, integrity and ability.

Q. All right. Now you have some expenses. In your opinion, what then should be a fair rate per car for selling, and I am not now including any expenses, including no factor whatsoever except the one item of selling. What do you think is a fair rate for salesmanship?

A. Salesmanship only?

Q. Yes, sir, how much per car.

A. There never was any such thing as a man that just sold only. There are so many other duties and so many

other lines of work that work in with that salesmanship, and if he isn't any good for anything else, then he is no good as a salesman.

I never did believe that considering the amount of effort that we exerted in receiving, handling, sorting, selling, collecting and remitting and all, keeping them posted, doing any number of other things that might come up, that we got enough commission. In the early days, the old-time commission man started on too low a rate and the commission business has always been on too low a rate from the beginning up to the present day. There are times when prices are high; that aside from all the responsibility, all the actual hard physical labor and mental strain that we all had to go through—guarantee ownership to the pur-
[fol. 1013] chaser, make remittance to the country, regardless of when or how we collected—I will say though that collections were good, there has been very little loss—our gross commissions were less than one-half of one percent. There is no other organization of men in the United States or in the world that I have ever heard of that has ever worked as cheap, for as little.

I have been personally acquainted with most of the successful commission men on this market for the past forty years. I don't know for sure that I can recall an instance in my entire experience where any person has been able to retire from the commission business, after having devoted the best years of his life to it, where he, during the period of his activity on this market, has been able to acquire a competence from the commissions he has collected in the business at the Union Stock Yards. I am not able to recall one such person for sure. Some men have acquired a competence but in nearly every case it was from some outside investment or other line of business, some side line, like land, ranch land or farm land, or something of that kind.

Q. Now, you have also told us that in your opinion the commission rate should be high enough to give a living to a commission man, I believe that is the way you phrased it?

A. I think I said and a profit also; he is entitled—if he has got energy and brains enough to run a commission business, he is entitled to make a little money.

[fol. 1014] Q. Yes, that is correct. By that statement,

did you mean that the rate should be high enough to give a living to every commission man on the yards and a profit?

A. I was not talking about every commission man; I had my own firm in mind or any firm that is a good going firm.

Cross-examination:

I will say if a man could only get 50 carloads a year, he has got no business in the commission business. I think the commission man who only receives 50 cars would be out of business on any reasonable rate at all. I would consider a reasonable rate 50 per cent more than we are getting.

God Almighty did not make men equal. The Constitution of this country says that they are free and equal, but God Almighty did not make them equal by any means. No legislation will make them equal; if one man has ability and courage and stamina and integrity enough to work and establish a good business and go ahead and make a profit out of it, according to all the laws and the Constitution of this country, as I understand it, he is entitled to do it. And your line of questioning, as I understand it, would put the best man that ever was here about on a par with the poorest man that ever was here, and I don't think there is anything fair about that. I have testified that I think the rate should be high enough to give me a living plus a profit.

[fol. 1015] Mr. T. E. Swiney, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 9711 Winchester Avenue, am engaged in the livestock commission business, and am one of the partners in Swiney Bros. at the Union Stock Yards. I have been a partner of that organization since this organization in its present form. I think it would be perhaps 1920 or 1922, when the firm was turned into a partnership again. I have been engaged in the commission business about 40 years. I started in as a yardman. I worked at first as a yardman for about 18 months, then I was an office man for about 18 months or two years, and then I combined the two,

yardman and office man for several years. Then I gave up the inside work and went outside most of the time with a little supervision over the clerical force inside and that has continued since. I now sell butcher cattle. I have sold butcher cattle from the time I started to sell cattle, with the exception of a few periods when it was necessary to step into some other branch for a short time, but that is the title, butcher stuff. All of my experience has been confined to the Chicago market. Disposing of butcher cattle, Swiney Bros. have the yard man bring them to the alley, proceed to sort them up and grade them, feed, water, get them ready in the shape that in our judgment they will appeal most to the buyer and then proceed to call in buyers to see if they cannot sell them at a satisfactory price.

[fol. 1016] I generally arrive at the office from seven to seven thirty. The day's program starts with getting on your yard clothes, and if the mail man has arrived by that time, take a look through the mail, see if there are any instructions regarding shipments. If not, I proceed out into the yards and start on whatever is over at the alleys at that time.

It is safe to say that no two markets at Chicago are the same in all particulars. Our consignments arrive in different parcels requiring different treatment by us as salesmen. Our demand is constantly changing from hour to hour and from day to day. We handle and sell a particular consignment on one market and may do it quickly and on another market may handle it in an entirely different way from start to finish. It may be said that we cannot find an average load or an average condition on the Chicago market. It is true that some portions of butcher loads will sell rapidly on one market and other parts of the load you have very great difficulty in selling and getting the price. It is very often true, that on another market, with a similar load, the conditions would be reversed. We attempt at all times to get the most money for the owners of the various classes that comprise loads of butcher cattle consigned to us, and show those cattle to the number of buyers which we deem it necessary in order to accomplish that purpose. It is often the case that with cows, we may be able to dispose of them quickly to one of the first persons who appears to buy, and again we may be required

[fol. 1017] on the same day to work out every available buyer that we can get to look at that type of cattle and still not be satisfied with our efforts.

In my judgment it has become increasingly more difficult to dispose of cattle satisfactorily since 1923. The buyers on this market have become more and more exacting to the particular classes which they want to buy. It requires a great deal more labor. Our business is drawn principally from the corn belt section, and the greater portion of it comes from Illinois and Iowa.

We make trips on our own accord and make trips also where we are specifically requested by our patrons to come and look at cattle and to advise regarding the marketing of those cattle. There is no record kept of what occasion brought about the trip. As to who decides as to whether a person with our firm who is eligible to solicit shall make a trip for that purpose, that is generally a matter of when it is convenient or most convenient for some particular person to go, and the custom with us has rather divided the territory that the different ones solicit in; and these trips are made ordinarily at the close of the week when we do not have butcher cattle to sell. I do my traveling on such trips sometimes by rail and sometimes by car. I do not know that our firm sold 673 cars of cattle during the year 1932. If the record shows that our firm sold that number and the average cars per salesman was 224, and that the number of salesmen employed was three, I do not [fol. 1018] believe that the business could have been done properly and our constituents been properly served by fewer salesmen than were engaged during 1932. I think the volume of Swiney Bros. during the year 1932 in butcher cattle was less compared with previous years within the last ten years.

I have made a constant effort to keep the volume of Swiney Bros. up to the average of previous years, but notwithstanding have not accomplished that purpose.

I do not believe that we expended any greater sum of money than should have been expended in the exercise of sound business judgment in an attempt to cause business to be consigned to Swiney Bros. for sale. I cannot recall any trip which I believe could have been avoided by the exercise of good judgment and the money spent on such trips thereby saved. I do not devote a great portion of

my time in an attempt to persuade owners of livestock to market livestock through our concern which would normally reach another competitor doing business on this market.

The business which we did attract to our firm through our solicitation would have gone to some other point than Chicago for sale. I find that that type of solicitation is more productive of business than an attempt on our part to take the business away from the other competitor. All of these trips have not been in that one nature; they have not been, but that has been the occasion frequently. It is [fol. 1019] the practice in this business for many raisers of livestock to change firms to whom they ship. We may receive a car from a man, please him in every respect, but for one reason or another, he may go to some other person with his next shipment, and be back with us with his next. And that does not indicate to me that we have not properly served him. I have not been confronted in my contacts with shippers to this market with any complaints with reference to the reasonableness of the charges for the service which we render—not on a basis of the service not being worth the charge. I have been spoken to with regard to the fact that stock was selling so low as it would perhaps be some aid to them if the charges were a little less, not the work itself did not warrant the charge.

The rates were fixed by the arbitrators following some rather severe declines in prices. I believe the rates for cattle were reduced at that time. Notwithstanding that cattle prices doubled on the Chicago market after that time, my associates and I made no requests to increase the rates by reason of that fact.

I believe that the rate, if fair in 1923, is not unreasonably high today, taking into consideration all the circumstances.

I do not believe that Swiney Bros. could render as excellent service under a reduced rate of commission at the Chicago yards as they can render at the present rate. In my judgment, the effect of a reduction in rates to Swiney [fol. 1020] Bros. would cripple the service. It would have the same effect on me financially.

I do not know any way whereby I could bring about a condition in the year 1934 which would cause me to have for sale twice the number of cattle which I did sell, if I could get them to sell; I would like to discover some way

of doing that. We consistently attempt, as a proprietor of Swiney Bros., to make reasonable increases in the amount of business that we are able to do. If there are too many men in business, it is because shippers consign livestock to those people for sale. The shipper himself can make the selection by reducing the number of houses to whom he may ship. If there be any criticism of the number of men who are engaged, it is because for each man engaged there is someone who ships him livestock because he believes that that man can best serve him in the sale of his livestock.

Q. At page 9 of the report of the arbitrators, it is said: "In reaching a conclusion as to what, in their judgment, will be a fair charge for the producer to pay and a fair compensation to the market agencies for the services rendered, the arbitrators have in mind that it is not within their province to pass on the question of whether a firm has a right to act as a market agency, but they have approached it from the standpoint that the compensation should be reasonably remunerative to those efficiently functioning as market agencies. It would not be to the advantage of the livestock producer to bring about arbitrarily such conditions as to cause necessary talent to seek a field for its services other than with a livestock market agency. It appears that the producer and the shipper should be the best judges as to the quality of service furnished them by the several market agencies and as to whether the service is satisfactory. It is entirely within the power of the [fol. 1021] patrons of the market to withhold patronage from those market agencies that fail to give satisfactory service. Herein lies an effective means, available to the shipper, of improving market services." Do you concur in that conclusion?

A. Yes, sir.

I believe that the same opportunity as indicated by the arbitrators is afforded the shipper of livestock to this market today. I do not believe that the general expenses of our concern, as well as the salaries paid by us, have been more than should have been paid in the exercise of sound business judgment in 1932.

I do not believe that we expended any money in an at-

tempt to get business which was not warranted under the circumstances at the time it was spent.

I do not believe in looking back over the business that we could reasonably have been expected, through the exercise of proper forethought, to have spent less money in the conduct of our business in serving our customers than was spent.

I do not recall any individual item or any item of expense that was not warranted by the circumstances.

Cross-examination:

I just heard read to me a section from the arbitration award, and I agreed with the statement that was made there. I cannot see where it would be any advantage to the [fol. 1022] producer to have the business coming to the Chicago market concentrated in the hands of fewer commission firms than are now doing that business. Competition is the reason. Competition means better service. Better service means more money to the man in the country. I cannot think of anyone who would gain anything by it. It might possibly be to the advantage of the commission firms at the present time, but we have no assurance that conditions will remain as they are for any great length of time. If for some reason the packers would cease to buy so much stock in the country direct and let the livestock find its natural market in natural places as it has in years past, there would not be any advantage in making fewer commission houses here. There might be necessity for more or larger commission houses. I don't think that fewer firms could handle it at the present time with any decidedly less men and give the same grade of service. I could not say as to whether the rates charged would be a factor in determining how many there would be on the market. If our commissions were doubled at the present time, I could not say that there would be a tendency for more firms to launch in business, even under present conditions. The tendency has been to draw away from the business rather than to come into it in late years. The reason for that, I presume is, that that has been a great deal due to the fact that there has been considerable interference with the normal flow of livestock as to who shall sell it and where it shall be sold and how it shall be sold.

[fol. 1023] I do not know that there has been any condi-

tion prevailing on the Chicago market which has required people to withdraw from the business; I don't know of any that have withdrawn voluntarily, but I have noticed that the younger generation has not stepped in to fill the gap where the old folks have dropped out through death or one thing or another of that kind. That is because the business is less remunerative, more restrictions and more obstacles placed in the way of the natural flow of livestock to the market. There is less of it being sold by commission men.

Inducements that would lead a person to go into the commission business, to begin with, there is a natural attraction of matching wits and ability with another man. There is a liking of some people for livestock, the same as there is a liking of some people for horses, boats and things of that kind, and you find that most of the people who are engaged in the livestock business, their predecessors were either in the country or on the market, and even those that date back to the third generation, their predecessors were in the livestock business in most cases. In a great many cases it is my observation that the younger generation is not following in line so much. When I speak of the restrictions being placed on the business, I am not speaking with regard to restrictions as particularly as to making it unprofitable. It is the effort to divert the business away from the central markets that tend to make it unprofitable. That tends to make it unprofitable, less desirable for a young man to enter into.

[fol. 1024] As to whether I think that fewer commission firms could serve the shippers coming to this market, there might be fewer firms, numerically, but not less men engaged in the business numerically to do the job as well as it is being done now. I do not think that every man in the market is operating to full capacity. At times, but he is essential. Because there is some particular thing that at some time during the day or week that he does better than somebody else in his outfit and thereby realizes more for the owner in the country by his being there. I don't mean that these men all sell stock. They are employed here in the yards; many of them have various other jobs that are essential as well as the selling of the livestock. As a general rule, I observe that where firms cease to engage in business on the market, that the business still continues to come to the market is naturally absorbed in the remaining firms doing busi-

ness. It is not for me to pass an opinion as to whether each firm engaged in business serves its customers as well as any other firm serves its customers. That is up to the man who patronizes them; that is why he patronizes them because he believes he obtains as good or possibly better service, in his opinion, from the firm that he patronizes than he might from any other firm.

I have known of cases where men employed have branched out and started their own commission firms. They make some friends and they become followers of them, and at the same time, they leave some of their own friends behind them.

[fol. 1025] If approximately 16 firms do about 50 percent of the business on the Chicago market at the present time, or did do so in 1932, I believe there is a reason why twice that number of firms could not do all the business. The nature of the business would not permit. One firm might handle a considerably greater number of cars, by the nature of the livestock received in those cars, they might be able to handle it very well. The same number of cars of a different nature they could not handle so well.

I don't know of any two concerns on the yards where the business does run the same. As to whatever number of firms are on the market, they should be maintained in their present status, regardless of the volume of business handled; to the degree with which they are able to maintain themselves, yes. I would not be in favor of having more firms come on the market unless the Lord would bring more livestock here. I do think there is such a thing as having a profitable volume of business from the standpoint of a commission firm. I would determine what is a profitable volume, when at the end of the year you have made some money, and what determines whether you will have some money made or not is the amount of business you have done when you get through that year. You cannot tell in advance. I don't think any man in the world knows at the beginning of the year whether he is going to have a profitable business or not in any line of business. We have high hopes when we start out the beginning of the year that we [fol. 1026] will have business at all. We know we have some friends in the country and we know that some of them are still fortunate enough to be able to do business and we hope they will continue to patronize us. I don't believe

our business is fairly constant one year with another, since the advent of direct buying. That has decreased our business. I believe it has the same general effect on the other commission firms on the Chicago market.

Mr. Charles M. Swiney, a witness called by the Respondents, testified as follows:

Direct examination:

I am one of the partners of Swiney Bros. I handle the hog end of the business. I have been selling hogs at the Union Stock Yards for 41 or 42 years. I commenced to sell hogs for Swiney, Burton & Co. The firm has undergone several changes since that time. At the time I started to sell hogs 41 or 42 years ago, I had been a yardman and assistant to my father selling hogs previous to that time. I have an assistant salesman and an alley man and the yardmen, when they have finished yarding their stuff, come to the alley and assist in the weighing. Our yardmen will yard any species that happens to be unloaded at that particular time. The men that are working on cattle will come and help on hogs. And if we are not busy, we will send them to the cattle alley. We have three yardmen. I ar- [fol. 1027] rive at the yards between 7:30 and eight o'clock. When the hogs are brought to our sales alley by the yardmen they are turned over to alley man and my assistant salesman, who place them in pens and grade them; sort them and grade them.

The hogs are sorted for quality by the assistant salesman or the alley man, generally the assistant salesman.

I am familiar with the grade of hogs that the various buyers purchase and show those buyers those hogs, price them to them, try to arrive at a bargain. At the time I go out into the yards, I familiarize myself with receipts at other points, take into consideration the close of the previous day's market and try to learn as much as I can what kind of orders the buyers have for the day. I am successful at times in learning what the orders are. I might get the information by talking to the buyers, or from their actions; there very often at the opening of the market will be an indication of it. If the proportion of the direct hogs is

large enough that it is leaving just about enough hogs to furnish the smaller packers, and the eastern shippers, or a little less, naturally that would strengthen me; or if in my estimation the proportion of hogs direct to the old line commission houses was larger than I thought the small packers and shippers would use, naturally that would weaken me.

Direct buying has decreased our hog business from thirty to forty percent. I have attempted to get that busi- [fol. 1028] ness back through personal contact and correspondence. The number of hogs arriving at the Chicago market in trucks is increasing.

I think we have to do more sorting and grade our hogs much closer now than we did in 1923. The Chicago market is the yardstick, the basic market for all markets and more or less establishes the prices for the entire country.

I find the most effective means of solicitation today in getting hogs shipped to our firm are personal contact and good service. We also do some advertising. We send out market letters and circulars and send some market papers. The office manager or anyone of the three brothers of the firm will determine the hog customers of our firm that will receive the market paper. I did not make many trips to the country last year, and Mr. Pence, my assistant salesman, does not make a great many. I would say he goes possibly once in three months.

Five months of 1932 the government work sheet shows that there was a loss and there were four months indicating a gain or a profit; it will depend upon the volume of the business handled.

Our business is organized to handle the amount of business which we feel it will be necessary to handle in the immediate future, and it may run over or less than what we contemplate, but our expenses remain stationary, so that when the volume goes up or down, and the commissions are [fol. 1029] more or less from one month to another, we might have a gain or we might have a loss. We reduced salaries during the year 1932. I don't remember the month.

The duties of the hog scale turn man, an item of expense being $318, is to keep track of the turn at the scales for the various firms who weigh there and to assist those firms when they are on turn. I think the item of $67.65 shown as extra labor for hogs, would be extra men put on days

when our receipts would be a little large and we needed a little extra help.

I think that the service rendered by the hog scale turn man is justifiable and beneficial to the man that pays the rate. The partners did not change their salary basis among themselves between the year 1931 and 1932. There was a reduction in my salary in 1932 from what it was in 1931. I don't remember the percentage. The owners' salaries were reduced $5,000 and the employees' approximately $3,000, notwithstanding the firm did not earn as much money during the year 1932 as it did during the year 1931.

In the handling of our hog business during the year, we did not spend any more money than was necessary, in my judgment, to spend doing it. Less money was spent in travel and solicitation in the year 1932 by our firm than in the year 1931, which includes various types of advertising. That is an illustration of the attempt on our part to reduce our expenses. Same with reference to a $100 reduction in stationery printing and supplies. Our miscellaneous [fol. 1030] expense for 1931 was $247. The same item for 1932 was $100.

Cross-examination:

My duties with our firm are: I manage the hog department; sell hogs; take care of the correspondence pertaining to that department; and superintend the yarding, sorting, grading of the hogs in that department. I am generally consulted with reference to any business policies to be followed, being an equal partner and having an equal say with my partners. I don't think any one of the partners have what we might call sole jurisdiction over the office.

Mr. Pence sorts and grades hogs and assists me in selling hogs. He does not sell the same lot of hogs that I would show; he sells some particular kind. He would assist me in selling mine. It is hard to say how often he does that. I wouldn't say very seldom and I could not approximate the time. There are two of us selling hogs, myself and Mr. Pence. Mr. Pence sells what we term odd hogs. I sell approximately 5/8 of our hog receipts, and Mr. Pence sells the remaining 3/8; that will vary seasonally. At times of the year, from July on until November, we receive a larger proportion of those throw-outs and odd hogs among our

receipts than we do the balance of the year. I cannot say the exact number which was the largest number of hogs which our firm has received any day this week, I would say between 800 and 900 head. That number was [fol. 1031 received yesterday. I would say that approximately the same proportion that I gave you indicated the numbers sold by me and by Mr. Pence. I do not know the largest number that we have received in a single day during the present month of July. I do not know whether it would run over the eight to nine hundred head received yesterday. I do very little soliciting in the country, not over ten days or two weeks per year. When I go to the country I solicit all kinds of livestock. I appraise hogs, not cattle, and very often I am asked as to my opinion what the future prospects as to prices might be and I have to give an estimate on that in regard to hogs only. I never discuss cattle prices with them. I don't know about the people, as to whether other commission firms are soliciting the same people that I solicit, but I would solicit their business nevertheless. I believe that other commission men solicit business that ordinarily go to us. I am familiar in a general way with the office routine, general expenditures of our company, the general management of our company. In my opinion the expenses we pay for yarding are reasonable expenses. For yarding hogs. I could not state the same with reference to cattle; I don't manage the cattle department, and I would not care to state. With reference to our office work, so far as it pertains to hogs, I believe that our expenses are reasonable. Wherever possible we have made an attempt to reduce our expenses in the year 1933, I mean our firm has. I cannot cite any particular instance offhand. I regard as reasonable our soliciting expenses, and by those expenses I refer to our entire firm and [fol. 1032] not to my own personal activities. As to whether our firm has sustained any actual loss with reference to the commission business in money, I would have to qualify my answer. We charge a salary, a very fair salary to ourselves, and at times our business has shown a loss where those salaries are charged. It shows a loss if those salaries are actually paid to us. And if we were to eliminate owners' salaries, or partners' salaries there would have been no loss. I would think that the current rate of interest would be what we should be allowed for such investment as Ex-

change membership, office furniture and the like. That is about six per cent. The information that I have accumulated before I go out to sell hogs in the morning helps me in forming my idea and impression of what the market is going to be as to prices.

We solicit from anybody from whom we think we can get business. In my opinion the laboring class are the larger portion of the consumers of pork. I know as a matter of fact that there has been a depression for several years past, and I know as a fact that there have been millions of people out of employment along the industrial lines, and in my opinion, that economic depression, with the resultant unemployment in the industrial world, tended to reduce the consumption of pork and thus tended to reduce the prices.

There is a direct relationship very closely connected between the price of corn and the price of pork or hogs. It is true that the price of corn for several years last past has [fol. 1033] been very low, as compared with previous years. It is true that because of the low price of corn as compared with the previous years, it is reasonable to suppose that the price of hogs would be low at the present time, but not as low as they have been.

Q. In your experience, do you believe that you could sell ten carloads of hogs a day, taking them just as they come to you, if you had them to sell?

A. What day?

Mr. Boyd: Now, Mr. Examiner, I object to that question for the reason that the work papers in this case show that in the case of this firm for the year 1932——

Mr. Miles: Did Mr. Boyd get the question? It is not that the witness has sold——

Mr. Boyd: Wait a minute. I want to make an objection and I have lost my papers. The record shows that this witness——

Mr. Miles: I object, Mr. Examiner, to any further statement as to what the record shows.

The Examiner: Objection overruled.

Mr. Boyd (continuing): I think the witness is entitled to know what it shows and the Examiner should rule on it after finding it out. In the case of straight carloads, plural ownerships, there were three consignments that had 94

head; there were six consignments that had 95 head; there was one consignment which had 110 head; there were five consignments which had 118 head; there were five consignments which had 128 head; there were two consignments which had 141 head; there was one consignment which had 171 head; there was one consignment which had 400 head. That in the case of the 401 head there were 26 drafts and in the case of one consignment containing 244 head there were 26 drafts, and that in the case of straight carloads there was one consignment that had 94 head; that there were four consignments that had 114 head; that there were eight consignments that had 138 head; with varying numbers of drafts; that there was one consignment that had 289 head; and that in the case of trucks there were 63 con- [fol. 1034] signments that had one head; there were 52 consignments that had two head; there were 33 consignments that had 3 head; there were 18 consignments that had 12 head; there were 12 consignments that — 22 head; there were 5 consignments that had 32 head; there were 6 consignments that had 45 head; there were 3 consignments that had 76 head; and there were 12 consignments that ran from 80 to 101, and it is manifestly impossible for any person to make a guess, considering the fact that the receipts were as varying as they were in the instant case.

Mr. Miles: Now, Mr. Examiner, in view of the extreme excessive coaching of the witness by the so-called figures just read, I will withdraw the question; it would be useless to follow it. That is all.

Redirect examination:

Our firm does not budget its expenses in advance. The control we have over our expenditures, there are some of the expenses over which we have no control. They are the minor items, though. We don't know how many postage stamps we are going to use, we don't know how much stationery we are going to use. We know how many employees we have and what their pay is, we know what our rental is, and fixed charges we know; and the others are minor. The policy our firm has with respect to the control of expenditure for advertising and soliciting, follows along as business goes. We run a file of customers, the majority of them come fairly close to finishing their livestock for mar-

ket within the same season each year, that is, perhaps from a period of at least six weeks or two months one year with another, and the stenographer who keeps track of the mailing list, the circular list, and things of that kind, puts into the active list, that is, the one which is posted, those names [fol. 1035] a short period before the time arrives when normally these people market their stock. That name stays in there until the stock comes to market or a short time has passed beyond the period when they normally come to market, and if we get no results, then, some special effort is made to find out why; then it is taken out and passed into the inactive list and the expense ceases on it.

Miss Reker handles our mailing list and the keeping of that customers' record list. I do not know how many people we have on our active list because that changes continuously. I could not tell you offhand. We make various efforts at different times to try and revive the inactive list, but if we have no success, they pass into the dead list.

Mr. Charles H. Boothroyd, a witness, called by the Respondents, testified as follows:

Direct examination:

I reside at 3968 Lake Park Avenue, in Chicago. I am one of the stockholders of H. D. Copeland & Co., and am President of the corporation. We are incorporated under the laws of the state of Illinois. There are four owners of the stock of that corporation. And I am the principal stockholder. In addition to being President of the company, I sell steer cattle.

[fol. 1036] My experience in the livestock industry before coming to the yards, I started in the poultry business in Iowa, merged from that into the buying of livestock and the butcher business up until I was twenty years of age. When I was 20, I came here and engaged in the livestock commission business; that is over 40 years ago. My first employment here on the stockyards was selling cattle. I got my experience in the country before I came here; I bought livestock for my father, we had two meat markets, and I butchered cattle and worked in the market. I have sold all kinds of cattle at Chicago in the last 40 years. I

started in with calves, and sold them for about a year. Then I sold calves and butcher stock, for about three years. I then sold steers and have been selling steers ever since.

The firm of H. D. Copeland & Co. has been in business since 1893. H. D. Copeland & Co. was organized about 1890 as Van Orsdol & Lindley. In 1893 Mr. Copeland bought out the Van Orsdol interest and it ran as Copeland & Lindley about one year and then Mr. Copeland bought out the Lindley interest and it ran H. D. Copeland & Co. from then on. I was with H. D. Copeland in 1893, and from that time on. I have owned the largest interest in H. D. Copeland & Co. since 1910.

H. D. Copeland & Co. under the Revenue Act of 1918 was found to be a personal service corporation and given that classification.

[fol. 1037] There are three active cattle salesmen besides myself and one who sells occasionally, sells when one of the other men is away. During 1932 I think we had one more; Tormehlien sold for us in 1932. He passed away six months ago and his place has not been filled.

We have three yardmen in the cattle division. I cannot say for sure how many we had in 1932. We took on Charlie Boothroyd in December or about that time of last year. I don't just remember the date. He was not put on by reason of the fact that he was a relative of the stockholders of the corporation; we had to increase our force in that respect. T. S. Boothroyd sells butcher stock and buys feeders. George Kidwell sells steers and yearlings and buys feeders. Mr. Tom Vincent sells all classes, and I confine my activities to steers only. I do not recall that Mr. Tormehlien was hurt before the first of January, but he was kept on the payroll after he died to even up his account. I do not believe that I ever saw the profit and loss statement, Exhibit C of Government Exhibit 15-21, for the year 1932; after examining the exhibit which was shown me, I believe that the exhibit substantially reflects the profit and loss for the year 1932. It has been my duty with the corporation to handle the affairs of the corporation with reference to the expenditures that are made, both as to salaries and expense items. In the exercise of that duty, we made an attempt to curtail our expenses during the year 1932. We made no expenditures which I believed were unwise or extravagant.

[fol. 1038] As to who had charge of the matter of who

will do the soliciting in the country and the trips that were made during the year 1932, I was consulted part of the time, and part of the time not. There were no more men going out, that is, over the two, they would ask me often, "Is anybody going out? I would like to go out some place," and I would either OK the trip or disapprove of it, but not always; but in the majority of cases, yes. I have general supervision of the hog yards, but I do not exercise it. Mr. McClelland has charge of that and Mr. Fawcett has charge of the sheep. Mr. McClelland is the hog salesman and Mr. Fawcett is the sheep salesman. Mr. Fawcett is treasurer of the corporation and Mr. McClelland is Secretary. Mr. T. S. Boothroyd who is the cattle salesman is the vice-president.

I reach my office in the morning between half past four and five in the wintertime, and in the summertime about half past five. In the wintertime, most every day except Sunday. Upon my arrival at the office, I take up the correspondence, line up the work for the stenographer while I am outside, and look over the list for those who were about ready to come and advise with them as to when they should ship. After I completed that I go down to the cattle alley and sort my cattle.

To describe how I go about selling steer cattle that are consigned to H. D. Copeland & Co., as the shipments arrive, the first procedure is to get them properly sorted as to fit into the market, and what the particular and peculiar con-
[fol. 1039] ditions of the market are at that time, sort your cattle accordingly. After they are sorted, they are watered or watered a little while before the opening of the market and they they are placed on sale. They may be sold to the first man and they may not be sold until the next day.

You don't treat all buyers alike. Some buyers would not buy cattle if you ask him the taking price. You have got to put on for him and take off. So we fit the asking price to what we think the—as long as it is above the value of the cattle, we fit the asking price according to our buyers to some extent. We do that to get a good price. Men trade differently, and we have gotten acquainted with those peculiarities by reason of having traded with them for years. There is no well set rule as to how a man trades with a buyer. Each sale is an individual operation of itself, has no connection whatever with any other [redacted]eal or any other

sale. Each consignment and each part of each consignment which is sold separate is treated as a separate transaction, and the sale is conducted on that basis. The changes that have been most apparent to me in the handling of steer cattle on this market in the last ten years, are, some smaller sized shipments, more highly mixed, that is, all varied grades that arrive in a shipment and the change in the buying, the system of buying; as well as the mode of arrival. The change in the mode of arrival has tended to reduce the number of animals in each sale. The packers have adopted what would among salesmen be known as practically an [fol. 1040] order business. Every load of cattle they buy, they have a particular, specific place for that. They practically have an order for that load of cattle before they ever buy it. Most of the packers have one crew that buys the shipping cattle and one that buys the house cattle, the cattle for local slaughter. The others are for shipment to the slaughtering plants that are located east of Chicago or elsewhere. The effect of the changes upon trading has been that it slows up the trading and you have to find a particular buyer for a particular bunch of cattle. We used to wholesale them years ago and sell a five or six load bunch of cattle all at one price, all in one bunch, and now it is uncommon to sell two loads of cattle together, and usually if you have two loads, we most always have to size them to fit particular orders. I may sell both loads of cattle to the same buyer, but he sends them to two different places. The packer buyers are more limited in their ability to trade than formerly. They get specific instructions in regard to certain animals as to class and grade more frequently than heretofore; they don't overbuy their orders like they used to. The main requirement of a competent steer salesman is to be honest. He has got to know the goods he is selling, has got to be a good judge of cattle, the dressing merits, and what they will weigh, and the quality of the cattle, and how they will probably grade after they are dressed. He has to be a good trader, a good judge of other people and use the right kind of trading tactics that wins the buyer's confidence, and he must be familiar with at all times, and be able to sense market conditions and the change in those [fol. 1041] conditions as they confront him, and be able to take advantage of them at all times, the unseen market.

The value of an article is determined by the ideas of the buyer and the seller, and it is to sense the pulse of the market and the feeling of the market, whether it is getting stronger or getting weaker or as to how he shall operate, if he operates successfully. The cattle are for sale to any man who wants to bid on them, regardless of who he is or what he wants to do with them, but to save time and get the best results we aim to show the cattle to those we think are the most likely buyers.

The market conditions on the Chicago market, two days are not alike and they often change every hour. The buyers for steer cattle on this market are shippers, packer buyers, order buyers and traders. We have also the order buying end for the packers and the order buyers on pick-up loads and buying on eastern orders, we call them eastern, although some of them go to Milwaukee.

We find it of value to the firm to have the various types of salesmen that we employ, some to sell steers, butcher stuff, calves, because the same buyer that buys calves does not buy any other grade of cattle. The man who buys cows does not buy calves or other grades. You have to have a salesman to meet the same class of buyers. The transactions move so rapidly that one man could not conveniently and beneficially sell all grades to the owner's best [fol. 1042] advantage I would say. So that has become necessary on account of the actual trading conditions on the market. There is a separate market for each grade and class of cattle. I mean that cows could be 25 cents higher and steers could be 25 cents lower the same day. The same is true with the various grades of steers I may have for sale. Yearlings could be partially higher and heavy cattle partially lower, both in the same hour. And stockers and feeders could be steady. One of the conditions that cause the prices to change from hour to hour and from day to day is that we take notice of more than anything else the buyer getting his orders filled. The shipper buyers come out and start the market off with a lot of pep, and they get their orders filled, and they begin to slow up and it is a cue to the packers to hold back and he holds back, takes in the bargain.

We may have receipts of, say, several thousand cattle on one day, many of which will be of a particular grade, and on the same number of cattle on another day the grades and

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classes would be entirely different as to the volume of those grades and classes on the market. So that in the case of any given number of cars being received by us, it may be that we will have more different grades in one day's receipts of the same number of cars than in the case of another. One day our cattle may all run from 1050 pounds down; another day practically all our receipts will run from 1050 pounds up.

[fol. 1043] The buyers are always bears on the market, regardless of how bad they want them.

I decide when a bid in my judgment represents what I feel is the strength of the market by intuition, and that is based upon the experience I have had in the years I have been on the market; and the observation of the changes that have taken place in the trading and keeping up to date generally with the trading. I always make up my mind what I think they will bring on the market before I show them. I am familiar with all the activities in the cattle alley both as to steers and butcher stuff in a general way. I know what our men are doing. I know whether or not they are using their time properly, as to whether there is a lot of idle time or whether or not they are busy. In the matter of handling by the salesmen and the carrying out of their duties during the trading hours on this market, I found that during the year 1932 that the salesmen that we employed in the sale of cattle were reasonably well occupied throughout the trading hours of the day in order to dispose of the business handled by H. D. Copeland & Co. I do not feel that the business of H. D. Copeland & Co. could have been handled to the advantage of the producer who shipped cattle to you for sale by a smaller number of persons than were employed in the sale of those cattle during the year 1932; we could not have handled the business with any less help without losing business. The condition that would cause us to lose business would have been the improper care and bad service to the man that we represented.

[fol. 1044] We had six salesmen, Mr. Frank Hartman, only selling occasionally; and Mr. Tormehlien who was injured during the year, but including those men in the average, we had an average of 282 cars per salesman as against a market average of 394 cars. It was just incidental; be-

cause our average per salesman was lower than the market average would not change that; we could not have gotten along with any less help. We reduced salaries several times and made several reductions.

I cannot account for that much reduction in the advertising between 1931 and 1932 except that we were spending just as little money as we could, carrying on the business just as economically as possible. We cut off two telephone extensions to save money. We were not able to save with respect to rent. We did not change our lighting system to any appreciable degree. I don't believe we spent any money getting business unwisely. The results were not so favorable in 1932 as they were in 1931 with reference to profit, notwithstanding a desire and an effort on the part of the corporation to reduce expenses wherever possible.

The corporation of H. D. Copeland & Co. and the business that it does, represent many years of painstaking effort on my part, as well as that of my associates. There has been spent a large sum of money and many years of effort to make H. D. Copeland one capable of rendering excellent service to our patrons.

[fol. 1045] I see no reason whatever that the rates should be reduced, the present commission rates; history shows that the price level of livestock rises and falls according to conditions and it never stays at one level; if it has reached an abnormally low level, it is soon followed by a high level.

After examining Government Exhibit 58-21 and Government Exhibit 15-21, and having examined the items of expense as set forth for the two years, I see no items in either schedule but what I consider very conservative. We have rendered every necessary service to our patrons during the years 1931 and 1932.

Cross-examination.

The difference in the profit between the years 1932 and 1931 was so small, it cannot be attributed to any one particular thing. I would not know why the difference. The character of our employees as to industry and efficiency is as high now as it ever has been since my contact with the firm. I think the salaries paid to our employees for the various classes of labor fair, just and reasonable. They

were all made just as low as I could possibly make them and retain the men. With reference to my own salary, it is a straight salary. We never aim to permit the principal of the business to draw a salary so large that it will embarrass the business. If our business would fall off to a considerable extent, my salary would be reduced. Preliminary to my going out to the yards actually to engage in [fol. 1046] selling, information as to the volume of receipts on the Chicago yards is marked on the Board; the prices of the previous day are not so marked. With reference to information about other stockyards, I have what is posted on the board and the market papers I read from the other markets. The purpose of obtaining information as to the receipts and sales at other yards is to keep posted on what is going on. I think keeping posted is of material benefit to me, because if a Nebraska customer wanted to know whether I thought he should sell at Omaha or come to Chicago, I would be in better position to tell him. I do not believe the receipts and sales at other yards influence the prices at Chicago. I think that this yard stands on its own footing as a price making market. I would not admit that during my time as a salesman that I have made errors in judgment and sold cattle at less than what we may call the fair price. As to whether I mean that I don't want to admit it publicly, I am not admitting it. As to whether I believe at times I have over-sold the buyer, that is, gotten really more than the market price, a drove of cattle might be worth more to one buyer than they would to another. I think I have gotten the better of the bargain at times. And I am willing to admit that sometimes I may have gotten the worst of it. I am only human.

We do not hold over cattle very often. Unless the owner advises to the contrary, we sell whatever we receive the day it is received.

[fol. 1047] Q. Yes, sir. As a matter of your actual doing of the thing, assume now that you had but a single carload in this morning, would you devote the entire morning in selling effort on that one carload.

A. I cannot answer that question.

Q. Assume that you had ten carloads, in your opinion would you devote any more time to selling the ten carloads than you would for the one?

A. It all depends on circumstances.

Q. Now, what circumstances would affect——

A. I might sell the ten cars of cattle in the first half hour and I might work all day long on the one car.

Q. Then it depends on what we may call the buying capacity?

A. It would really just depend on how we got off on the market and what luck we had in meeting the buyer and getting the buyer in just the psychological moment when he was in the notion and you were, too.

I don't know that it is more difficult to sell a straight carload of steers, we will call it prime quality and single ownership, today than it was ten years ago or five years ago, but it is more uncertain. I do not know the most profitable year we have had beginning with the year 1923 and ending with the present year. We had more profitable years than during the year 1932, which was due to the volume. The commission rates were the same.

Q. Can you tell us the greatest number of head of steers that you have sold this present week, and by you, I now mean you, personally, and not your firm?

A. No, sir.

Q. Do you know how many head you sold yesterday?

A. No, sir.

Q. Nor any day?

[fol. 1048] A. No, sir.

Q. Now, could you give us the greatest number of carlots of steers which your firm has received any day this week and which you have personally sold?

A. No, sir.

Q. Do you know the greatest number of carlots your firm has received this week, any one day?

A. Exactly, no sir.

Q. Could you approximate it?

A. I would not attempt it.

Q. In your opinion, is there any reason why your firm cannot handle the average number of livestock handled by other firms on the Chicago yards? If so, what, in your opinion, is the reason?

Mr. Boyd: Just a minute, I object to that unless the question includes in it the employees that were used in

handling that average, and apprise the witness of what the average is.

Mr. Miles: The distinguished counselor has already introduced a statement in this record showing the average number of head handled by the various firms and the number handled by this firm. I would be very glad if the witness can tell us why in his opinion his firm cannot handle an equal number of head with the average for the market if he has an opinion.

Mr. Boyd: With the same force?

Mr. Miles: Let the witness qualify it in any way he will. He may use the same force.

The Examiner: The witness may answer. Read the question.

The Witness: We can handle the same number, but it is possible during that period of time we did not, but that is not for lack of ability, but just because our receipts happened to run that way.

My attention is called to the audit for our firm marked Schedule 2, and I am of the opinion that the first salary is mine and the second one is my brother's. I note there is a [fol. 1049] difference in the salaries under the caption of non-owners, cattle salesmen. Briefly the salaries, or the difference in salaries, Nos. 1, 5, 6, and 7, I think it is based on ability and the importance of the department and the service, quality of service rendered. It is not generally recognized that the cattle department is of major importance with any commission firm. Some firms have their cattle department as their major source of income, and other firms their hog department their major source of income, and some firms their sheep is their major source of income. I don't think the importance would depend upon the gross income yielded by that department.

With reference to the first two numbers on the firm, there is a senior, it is a senior and junior position. One directs the policy of the business, guides it in all of its affairs and through all the rough waters, and the other one takes orders and does what he is told to do. Part of this would be due to a superior knowledge of the business, how it should be done and what should be done, and the other is the selling of the more important higher priced cattle. To some extent the superior knowledge of the business would

reflect itself or be utilized in the management of the business. I believe the item "Reserve for Contingencies" is a $100 a month set up for mortgage and theft, selling cattle that might be mortgaged; we carry our own liability. We carry the item for six or seven years ourselves, defended a couple of suits successfully, but paid out nothing from the fund.

[fol. 1050] Redirect examination:

To some extent we have attempted since my connection with the firm, to confine or draw its business from a given territory. Our acquaintance in that particular territory has been made throughout the years we have been in business, and I have formed personal friendships among our patrons throughout those years in those territories. Our employees have particular territories in which they are well acquainted, better than some of the other salesmen. If they had a crop failure, certainly there would be less livestock produced in that territory. We are always looking to increase our business from any quarter in which we can increase it, but we always feel we stand the best chance to increase it out of the territory where we are best known. We do not draw any business from Texas, so that if we had a shortage of corn in Iowa, I would not consider it expedient or wise to attempt to go into Texas range territory, in order to make up that loss of business. What I would naturally have to do would be to maintain our services on its high standard until and if all our patrons could raise more livestock to ship to us.

We have a better chance to get a new customer out of territory where we can refer him to neighbors for whom we have sold and it has been more satisfactory than where we have to go into a territory where we are not known at all. We draw our business mostly from the States of Iowa and Illinois. Unless we did a certain amount of advertising, either by personal solicitation or through gen- [fol. 1051] eral advertising through the mail, we would naturally fade out of the market and out of the trade entirely.

Recross-examination:

I am not intending to leave the impression that I have some territory that is largely monopolistic. That is not

correct. The various commission men on the Chicago yards invade my territory. I would regard as my territory, I came from Humbolt County, Iowa. I was raised there and everybody knows me and knew my father, and he was a pioneer in that section of the country. A great many people ship to us out of knowing the family and knowing the record of the family.

MR. THOMAS E. SWINEY, a witness called by the Respondents, returned to the stand and testified as follows:

Cross-examination continued:

I personally solicit business. You might say that all of the active salesmen at some time or other have or do take short fliers in the country. Iowa and Illinois have been my principal territories that I have covered in making my soliciting trips. It is the intent and purpose of these trips to visit old customers. If by any chance there is any new prospects, we work on him as much as the circumstances [fol. 1052] will permit. They are generally patrons who have regularly shipped livestock to our firm. At times we go out into a new territory with an attempt to get new customers, but it is mostly on territory adjoining. It is easier to spread your acquaintance from a point where you are known so you can say "John Jones over in such a neighborhood has patronized us for a number of years and has always been well satisfied." In that way it is much easier to establish a contact. There is no territory where there is not soliciting more or less by other commission firms. There is no territory where our firm exercises complete control.

Our firm gets out a market letter which contains market information compiled by the different salesmen with respect to those things that they sell, personally, so that it has that touch to it. There is not much of the space taken up with an urge to shippers or prospective customers to send their livestock to our firm. It is generally taken for granted and assumed that those who have shipped to us in the past and indicated they were satisfied would in the future, and when they advise us they have stock on feed, we take that as an indication that their intention is

to ship to us, so that there is not much space in what we call market letters given to "Won't you ship to us?" It is more when it would be advisable to market certain kinds of stock. We do not give in that letter as a rule, if at all very seldom, quotations of prices received by our firm for certain classes and grades of livestock. We would not be [fol. 1053] giving a fair view of the entire market. We aim to show as clear as we can a fair picture of the market as a whole. We rarely ever mention outstanding sales made by our firm. In some instances it is true that our patrons require services of us which they did not require in 1923.

We often have a man give his time to bringing over two calves from the truck chutes, two or three cattle, five or six cattle, half a dozen cattle; back in 1923, it was rare that he came that there was not a full car shipment or possibly a two-car shipment. In the same proportion, the weighing, feeding, and the office work, the drafts at the scales, the tickets to be computed, the billing to the purchasers, account sales, the recapitulation sheets that are written upon the day's business, the checks that are issued on these one, two or three animal shipments, and they are issued separately, and then the truck man is paid for and the insurance company is paid for, and in some of them, when we get through there is nothing left. We find in some cases since the bank trouble, and it still holds true, by the way, some of these cooperative shipments, they are requiring a separate check for each individual owner.

I think it could be more easily named in saying that it has been turning from a wholesale to a retail business.

I think the chief factor in drawing business to our firm, the most effective thing that we do, is personal contact, along with having them satisfied that you receive and get for them the market prices. There was not a very large [fol. 1054] turnover in our customers, to a great extent, until financial trouble became so very severe. We lost a good many customers in that case. They found they were unable to finance themselves on cattle again. Once we get a customer he stays with us; that is pretty generally the case. I believe you will find that over 75 per cent of the business that we get are repeaters; in fact, we have some of them in the third generation in several families that I know of. It happens that our customers will divide their

shipments between our firm and another firm on the market.

Q. On direct examination I believe you were advised of the average number of cars or carlot equivalents per salesman handled by your firm, and in response to a question, you stated that fewer salesmen could not have sold the livestock, do you recall that?

A. Did I say that fewer salesmen could not have sold it, or could not have given the same satisfactory service?

Q. Well, I understood you to say they could not have sold them. Perhaps you may have added "and could not give the same service", I am not positive about it.

A. That would have been my intention.

Q. In your opinion, could your firm have handled as many cars or head of livestock as any other firm on the market of like kind and character, with the same organization?

Mr. Boyd: Now, Mr. Examiner, I object to the question for the reason that the witness is not advised as to what his own business constituted nor what another firm of like kind and character means or who it has reference to.

Mr. O'Bryan: I object to the question on the ground that no proper foundation was laid for it, that there is nothing in the record so far that indicates that there is any other [fol. 1055] firm of like kind and character or that the witness knows there is any other firm of like kind and character. It is a question assuming a fact which is of too general a nature to permit of an answer.

Mr. Dagger: Well, Mr. Examiner, I am at a loss to understand how counsel knows what the witness knows. This witness seems to be an intelligent man, knows about the market, knows conditions on the market. We object to counsel indicating to the witness what he does or does not know.

Mr. O'Bryan: I am not indicating to the witness what he does or does not know. I am indicating wherein your question is deficient in that it does not make any assumption on which the witness can base any answer.

Mr. Dagger: I am asking the witness to state what he knows in his mind from his experience as a matter of fact.

Mr. O'Bryan: What fact?

Mr. Dagger: Just what the question said.

Mr. O'Bryan: The question does not assume any facts upon which he can base an answer. That is the very point of the objection.

Mr. Dagger: I am not asking the witness a hypothetical question, I am asking him a question based upon his experience.

Mr. O'Bryan: Based on his experience has to be based on some facts.

Mr. Dagger: There are plenty of facts in the record.

Mr. O'Bryan: No proper foundation laid for a question of that kind.

Mr. Dagger: No further argument, Mr. Examiner.

The Examiner: Read the question.

(Whereupon the question was re-read.)

The Examiner: Objection overruled.

The Witness: I think that is a question that I cannot answer with any degree of certainty. The other organization [fol. 1056] might have as many people and yet the two might not be of the same ability or the same efficiency.

Mr. Dagger (continuing): In your opinion, are your salesmen and your employees as efficient and as able as any others on the market?

Mr. O'Bryan: I object to the question as being too general in form, no proper foundation laid for it, and no testimony from the witness that he knows what the efficiency of other salesmen on the market is.

Mr. Boyd: And I object to the question for the reason that the witness has not shown that he knows the capabilities of other salesmen on the market, nor their capacity.

The Examiner: Read the question.

(Whereupon the question was read.)

The Examiner: Objection overruled.

The Witness: We consider them so. I don't know whether that is——

Mr. Dagger (continuing): Well, do you know of any reason why your firm, with the organization that you have, could not handle as many cars or head of livestock of like kind and character as any other firm with the same type of organization as yours?

Mr. Boyd: Same objection, Mr. Examiner.
The Examiner: Objection overruled.

The Witness: I know of no reason.

Mr. Dagger (continuing): You answered in the affirmative to this question: "If there be too many men in business, is it not because shippers consign livestock to those people for sale?" Do you recall that question?

A. No, I don't recall it.

Q. In answer to that, you said: "Yes, sir". Do you recall what you had in mind when you answered that question?

A. Not that question, I don't recall the question, but I would give the same answer to a question of that kind.

[fol. 1057] Q. Was it your thought when you answered that question that the shippers could control the number of commission firms in business?

A. No, not so much as the fact that they still retain the right to select whom they choose to ship their livestock to.

Q. You know of no restrictions on that?

A. I don't. I have never heard of any.

Q. And do you know of any restriction with respect to the number of firms that may engage in the business on the market?

A. No, I do not.

Q. You were asked a question in regard to what would happen if your firm could sell twice the cattle or get twice the cattle to sell in 1934 that it had in a previous year, and you stated that you would like to discover some way of doing that, do you recall that?

A. I don't recall it, but I would be very glad to find some way to, yes, sir.

Q. Now, why would you?

A. I think that would be more profitable.

Q. Why?

A. Greater income.

Q. I beg your pardon?

A. Greater income.

Q. Could you handle more business with your present organization?

A. I believe so, if it was to come within certain limitations, that is, divide itself up evenly so that in no day there would be a greater amount than we could handle with

the present livestock, but unfortunately livestock never comes that way.

Q. What do you regard your maximum capacity for any day?

Mr. Boyd: I object to that question unless it is shown with sufficient definiteness to indicate to the witness what [fol. 1058] is meant by "maximum capacity," what kind of business is supposed to be handled and the circumstances surrounding its handling.

Mr. O'Bryan: I object to it on the ground that "maximum capacity" without any type, species, grade or quality is entirely too indefinite. The question has no proper foundation laid for it. He is asking him what his maximum capacity on any given day is and this witness is qualified only as a cattle salesman and the question refers, I take it, to any species of livestock; it takes into consideration none of the market conditions surrounding the day in question and is not properly founded on fact at all on which an answer can be based.

Mr. Dagger: I tell you, Mr. Examiner, the question relates to cattle, the species in regard to which this witness testified on direct examination.

The Examiner: Read the question.

(Whereupon the question was read.)

The Examiner: Objection overruled.

The Witness: That is an unknown quantity. So many elements take part in that, it would be impossible to give even any estimate until that day had come and gone, until the thing was sold, until the day's work was completed.

Mr. Dagger (continuing): Do you ever turn down any livestock that is shipped to you for sale, refuse to accept it because you have too many?

A. No.

Q. As a matter of fact, Mr. Swiney, your firm as now organized would handle just as much as you can possibly get on any one day, would it not, and would be glad to get more?

Mr. O'Bryan: I object to that question as being too general, they can handle as much as they can get on any one day. They might get the total receipts of the market on any one day and it is obvious they could not handle it.

Mr. Dagger: Counsel now suggests to the witness an impossible condition.

[fol. 1059] Mr. O'Bryan: It is an impossible question to answer, as all of these questions are.

Mr. Dagger: Not at all. The questions have all been directly responsive to the witness' previous answers to a question.

The Examiner: Objection overruled.

The Witness: Am I to answer?

The Examiner: Yes, sir.

The Witness: Will you read the question, please?

(Whereupon the question was read.)

The Witness: That is beyond my power to answer because it is possible for a firm to receive more than they can handle.

Q. Do you know of that happening within recent years?

A. Oh, I don't recall it just in the last few years, but it has been the case.

Q. When?

A. Some years ago, when receipts would be heavy for some particular day or some particular period or week, and then again I have seen the market in such condition so that we have carried cattle from day to day and sometimes week to week with no fault of ours, and I think there was a time back about 1926 when I don't believe any firm in the yards had their cattle yards cleaned up completely for a period of several weeks.

The carrying of livestock from day to day and week to week as a general proposition, does not happen, but it might take place, has taken place. When livestock is carried from one day to another, it is because of the capacity of the market to absorb it. The salesman offers them for sale but he is unable to complete the transaction. I do not recall the largest number of head of cattle handled by our [fol. 1060] firm in 1923. I haven't any idea. I think the congested condition which I spoke of in 1926 continued for several months. I mean the condition existed for that long; there was a period there when there was excessive receipts of heavy cattle and the buyers could not use them all and they would come out in the morning and say, "Well, I will try and use a couple of loads from you today; I have to treat the rest of the boys equally as well and I will spread

my orders around and give you a chance at them." If you had any in excess of that, they accumulated on your hands. Some cattle were carried much longer than a week. It was not because they were undesirables, because they were good cattle, but there was more of that type of cattle on the market than the packers chose to take and put in the freezer. They were eventually disposed of. I do not recall the largest run we had on any one day during that period. I do not recall the largest number of livestock or cattle that I personally have sold in 1933. I do not recall the largest number of cattle I sold any one day this week. I do not have that in mind. I sold cattle this morning. There was a moderate run on the yards today. I couldn't tell you exactly how many I sold; I don't think it would exceed, in total, exceed one car if they had all come in one shipment. Part of them were received by truck and part by car. Today we had an active market on the better grade of corn fed butcher stuff and a dull, slow and lower market on grass butcher stuff. I sold all the butcher stuff for our [fol. 1061] firm today including the bulls. I will try to tell you from memory into how many lots I sold the butcher stuff today. I would say there were just about fifteen sales in what would not exceed one total car if they had come in one shipment. The market opened around 8:00 to 8:30. I finished up about 11:30. I would not say that this morning was as typical of our week's business. Sometimes receipts get in early and you get a chance to handle, go through your cattle as a whole, but other times they string out all day. We had cattle that arrived after 11 o'clock in truck today.

As to whether Thursday is one of the days of heavy truck receipts generally speaking, that depends entirely on the previous day's market as to what the truck receipts may be the next day, as to whether they will be large or small. There is no way of telling in advance. One Thursday might be heavy and the next one light.

Redirect examination:

Q. Now, Mr. Swiney, from the standpoint of the commissions earned monthly and using the work sheets of the Government, as it reflects the income from the various types of receipts in January of 1932, the total commissions earned by your company according to those figures was

$5,324—I will drop the cents,—of that amount $455 was the commissions from straight cars; $3,125 was the amount received from hogs in straight cars; drive-ins amounted to $142 for cattle and $192 for hogs. In the month of July of the same year, the total commissions were $2,409, less than half of that earned in January; the straight cars amounted to $126; the hogs $839 in straight cars; the mixed, plurals, which include cattle and calves, amounted to $247; the drive-in cattle was $101. Now in the month of August, [fol. 1062] the following month, the total earned was $4,208; the amount in straight cars was $748 in the case of cattle; hogs $1,180; drive-in cattle $237; drive-in hogs, $302. In the month of September, the total amount was $3,697; the straight cars was $675 cattle; $1,146 for hogs; $126 for drive-in cattle; and $627 for drive-in hogs. Now, in January, the amount received from straight cars, cattle, as compared with the commissions received from hogs was one-seventh. In July, it was two-thirds, about 7 to 1,—$126 to $839; and, in the month of October, it was $849 in the case of cattle and it was $839 in the case of hogs, or almost equal. Now, in the operation of the commission business and the operation of your business, regardless of what the rate may be, and without considering it in any manner, shape or form, can you conceive of any method which could be used by you in the operation of your firm, whereby you could make the various departments do the same amount of work monthly and produce substantially the same amount of income monthly, when compared with the other?

A. No, sir, I cannot imagine that being done.

Q. Now, the total revenue for the first ten months of the year: In January, there was $5300; and it gradually dropped down until the month of July was reached, when it jumped back up above the point which had been attained in February, and then it shows that it moved back from $4200 to $3700 to $3500. Is it possible to avoid those seasonal changes in a commission man's business of the type of yours?

A. No, sir.

Q. So that you maintain a force, of necessity, to take care of the business that would arrive in January, and you would have to have that force to handle the business that you sold in July?

A. Yes, sir.

Q. And in July you only had one-half of the gross revenue that you had in January?

A. We maintain the same force, yes.

Q. And that was necessary to the proper conduct of your business?

A. Yes, sir.

[fol. 1063] Q. Does it indicate to your mind that because you only received $2400 in commissions in July as against $4200 in commissions in August, that your men were not efficient in July and were efficient in August?

A. Not at all.

Q. Do you know how a change in rate by the Government, or if they contended that in July you were not so busy as you were in August and perforce you should have been busier in July, how a change in rate can in any sense change that fluctuation?

A. No sir.

Q. Do you know any method to meet the changed condition between July and August that could have been used by you, whereby you could have reduced your expenses in July in the proportion which the income for that month bears to the income the following month of August?

A. I do not.

Q. Now, during the month of January, you handled a very considerably fewer number of carloads than you did in August as represented by the commissions in the case of cattle. Now, in the case of hogs, you received $3100 in commissions for hogs in January, and $1180 for hogs in August, in straight cars. Now, do you know any means whereby you could have caused your August receipts to have approximated in commissions the amount earned in January?

A. I do not.

Q. And do you think the rate would make any difference as to that?

A. Not a particle.

Q. Was your force as efficient in the handling of the August business, in your judgment, as it was in the handling of the January business?

A. Yes.

Q. Do you believe, Mr. Swiney, that you sell for one man cattle that bring $7.00 a hundred and there are 20

head in one draft sold in one draft, and in another consignment there are 20 head of cattle in one draft that sell for $5.00 per hundredweight, do you think that the commission charge should be greater in the case of the $7.00 [fol. 1064] cattle than in the case of the $5.00 cattle?

A. No, sir.

Q. Is it not true that it may be more difficult or require more time, more effort and more expense to sell the $5.00 cattle than the $7.00?

A. That is frequently the case.

Q. So you do not believe commission charges should be based upon the selling price?

A. No sir.

One of the methods used by shippers of livestock to test the proficiency of salesmen they have been using is to split shipments with other firms at times, and in that way a shipper attempts to determine which salesman may sell his livestock the best. Under those circumstances, if we sell as well as our competitor, we are able mostly thereby to retain the man's business, but not entirely.

Notwithstanding the fact that the shipper attempts to make that test, it is not in every case a reliable test, because no two bunches of cattle are ever identically the same, and the circumstances surrounding the handling of cattle in one division or another may be somewhat dissimilar, due to the condition in trading conditions prevailing from hour to hour in the two divisions.

The buyers in my division may have orders suitable for a particular class of cattle and in another division the orders may not be as great, the demand as great. But splitting shipments is the best test of different salesmen's ability and is the only one the shipper knows.

[fol. 1065] Cross-examination:

When I stated that I considered our salesmen as efficient as any other salesmen on the market, that was only with regard to their ability to obtain the market price for the livestock they sell, and I was only referring to cattle.

I participate in the management of the firm, do not have charge of the employment of salesmen entirely; to a certain extent I do have a voice in the employment of salesmen. In my opinion the volume a salesman can handle is

a factor in his efficiency when I am considering employment of salesmen; also the patronage that he can bring to that firm will have something to do as to whether he is desirable to have or not. I regard those as two vital factors, in addition to other qualities.

T. S. Boothroyd, called as a witness by the Respondents, testified as follows:

Recross-examination:

Q. Just how would you determine the efficiency of a salesman?

A. Well, if I were to determine it, I would determine it by the following he had.

[fol. 1066] Mr. E. G. Fulkerson, a witness called by the Respondents testified as follows:

Direct examination:

I live at 8910 South Hamilton Avenue, Chicago, and am president of the National Live Stock Commission Co. doing business at Chicago. I was raised on a farm in Missouri and when I was twelve to fourteen years old I went to buying and shipping livestock, and did that up until the time I came to Chicago. When I came to Chicago I was employed as a butcher salesman for the Drumm-Flato Commission Company. Started with them on the first of January, 1898. I was with them for three years and then Swift hired me to buy cattle for them, and I was with Swift & Co. for one year, and Drumm-Flato hired me back, sent me to Kansas City to sell Texas cattle, and I was down there for about a year and they transferred me back to Chicago, and I was with them for two more years. Alexander Ward and Conover at that time hired me away from them to sell their steers, and I sold their steers or helped sell them for four years and then the New York Butchers hired me to buy their cattle. The New York Butchers are now owned by Armour & Co. I bought cattle for them which were shipped on foot to New York. I used to ship

them probably a couple of nundred cars a week of the best cattle we could buy here in the yards which they used [fol. 1067] mostly for their Kosher trade, and then Tom Kelly hired me to sell the cattle for the National Live Stock Commission Co., or as head cattle salesman for the National. That has been 24 or 25 years ago, and I have been selling cattle and also been president of the National for the past 15 years. I own the controlling interest in the National Live Stock Commission Co. The National was one of the large commission companies when I went to work for them, and has been since I have been with them until probably last year, maybe the third now, I am not sure. We have five cattle salesmen at present; I think we had five in 1923. The record will show that. Mr. Frank Supplee is vice president and hog salesman, and Mr. Cruse is secretary-treasurer, and works in the office. Our cattle salesmen are E. G. Fulkerson, B. B. Miles, A. L. Crawford, F. J. Shorter and H. P. Augustine. Mr. Supplee, our vice president handles the hogs; Mr. M. J. Barsoe handles the sheep; Ethel Bogen is one of the stenographers and also runs our machines that we make out circulars on. Mr. John Brady is head alley man for Mr. Crawford in one of the butcher alleys. Ray Coleman is one of the bill clerks in the office; O. L. Davies is one of our office men, attends to collections and so forth. LeRoy Ellington is one of our yard men, trippers. F. A. Fitzgibbons is with Mr. Moberly in the hog department as a yard man and also works in the office in the afternoon. Elizabeth Fulkerson is my daughter. She was a stenographer until about a month ago. She is now at home. C. A. [fol. 1068] Hanrahan is our head man at the desk and general utility man and also works on the bills in the afternoons, and general handy man of all description around. Tom Healy is a yard man in Mr. Shorter's alley in the butcher alley. P. W. Moberly is assistant hog salesman to Mr. Supplee. Mr. McCarthy was a yardman in the hog division but he is not with us now; he left in July, 1932. John McDermott is my head alley man in the steer alley, and C. J. Napier is our cashier and remittance man, and bookkeeper and checks over the bills and so forth. A. G. Nelson is the yardman in the butcher alley and also makes trips driving. H. E. Pfoffenberger is assistant sheep salesman and yardman, assistant to Mr. Barsoe. G. R.

Reels was a yardman for us but is not with us anymore. We cut off every expense we could and we let him go. That was in July, 1932. P. M. Ryder is one of the yardmen in the hog alleys. William Shaughnessy is our tripper; stays at the chutes and helps, brings the shipments over to the pens and so forth. He is general yardman. Robert Slaughter is our check-up man at the chutes. Miss E. M. Wardle was a stenographer; she left and I put my daughter on for a short time. John Weller is a stenographer and William Young is a yardman in the hog division, general yardman. That covers 30 employees.

The changes I have made in my force since January 1st, 1933, I cut my expenses all I possibly could along to maintain our standard. There are a few of those that I [fol. 1069] named we have let go to cut our expenses.

I maintain general supervision over the operation of the company. I employ such persons as are employed with the exception of probably stenographers; I leave them to Mr. Cruse but I advise with him about them. I recall the circumstances of the rates being fixed by arbitration at this market. I was one of the committee that was in Washington. I think we had several sessions with Mr. Gore and Mr. Dagger. At the conclusion of their investigation, the arbitrators made the rates which are now being charged by me at the Chicago market. There have been substantially no changes in the rates that were made at that time that I can recall. I recall that the livestock industry was undergoing a deflation in prices, price levels during 1922 and 1923. I know that we had some low prices along about that time; I don't just exactly know whether that was exactly the low spot or not, but it was around that. I remember that livestock sold at least two or three times as high during the five or six years previous to that. The arbitrators made a reduction in the rates at that time. Since the low period reached along in 1923, I recall that the markets advanced until in 1928 cattle were considerably higher than they were in July,—I don't know just how much. I do not know of any proposal made by any person connected with our concern or any other that I am familiar with to raise the rates because the livestock prices were higher. [fol. 1070] There was no investigation made by the Government or any other person to adjust the rates in accordance with the prices that I know of. It is not my experi-

ence that livestock is easier to handle now and sell it on the Chicago market than it was in 1923. Our demand is very limited now, and our receipts are coming differently than they were in former years, more split up stuff, and it is harder to handle. I might also state that we have more specialties now. We have to get every class of stock pretty near; you have to go and get a different buyer to buy it. We have got men that buy this low priced cattle now and they have got others that will buy their shippers and others that will buy their house cattle, and it is a good deal like doctors nowadays, you have specialties, specialists, I should say. We used to take one man and sell him 40 or 50 loads of cattle but you cannot do that any more. I was talking about years ago. That was away back. In the handling of our business in 1932, I made an effort to spend no more money than was necessary in the proper conduct of our business; tried to make it all the way through.

I usually get on my horse around seven to seven thirty of a morning. On busy days, sometimes I get out a little earlier, on Mondays and Wednesdays, but as a rule seven to seven thirty, and I ride a horse all the time during the [fol. 1071] trading hours, practically all the time, so there are days, and it has been for some time, that it is practically every day because the markets have been bad right recently, that I would be on a horse for more than eight hours a day. Our other salesmen ride horses also. Practically all the cattle salesmen. Mr. Augustine probably does not require one all of the time.

In dividing up the hours, or after the work has been arranged for the day, I keep general supervision over the transactions in the cattle alley, I practically know what is going on in all the alleys. And they consult me quite often during the trading hours. I leave in the evening about 5:30 and go home. I have a long distance telephone in the alley and I get, I will say from five to fifteen long distance calls during the day while I am trading, from different sections of the country and from different markets. Last Tuesday night at nine thirty I had a call from the Yard Company here telling me that nine loads of cattle had gotten in and that the owners wanted some of our men to take charge of them and I asked them if they could not yard them and they said they could, but the man wanted some of our men there, and I tried to get ahold of my yard boys, but I

had to get in my car myself and to go up there at nine thirty. I finally got hold of one of them just as he came in from the Fair and I sent him up to help them yard them and feed them that night. That is one of the things that is [fol. 1072] not unusual that is required by our customers. Lots of time- from nine to twelve and one o'clock in the morning I have had them call me from different parts of the country over long distance wanting to know when to ship and what I thought of the markets, etc. The National Live Stock Commission Company receives livestock from all the States of the United States, from Canada, and the Gulf of Mexico, down to The Republic of Mexico and the Pacific Coast, and from Ohio and other eastern points. We handle all grades of cattle, hogs and sheep; including steers from the Northwest to Brahmas from the southwest.

Our trade consists of good sized farmers and feeders. Years ago we decided that it would be our best business for the future, and we have thirty odd thousands mailing list of farmers and feeders in that class of shippers, but we handle all classes incidentally and glad to get them.

As to the necessity for the expense which was incurred in soliciting business, getting and maintaining our business during the year 1932, I tried to hold it as low as I could to maintain our business, and we find that we have got to do a certain amount of soliciting along in order to hold our trade. Our old customers will die off and new ones will keep coming on, and then we have got to keep getting new customers, and a lot of our old ones don't even die off, but they go broke like they have in the last few years, and new ones take their places, and we have got to keep advertising and soliciting in order to keep our business up. I find that [fol. 1073] our force does not have time to comply with all of the requests that come to us to visit their feed lots. Lots of times we cannot go when we have requests. It is natural for us to attempt to have solicitors not only to see and appraise cattle, but solicit any other cattle that may be in the neighborhood ready to ship.

I consider that most of the business that comes to us is account of our service, and our service when we sell their stock, and also in keeping them posted and in keeping in personal contact with them.

While our reputation and our service may be of the best, it is necessary to expend a sum of money for soliciting and

keeping them constantly posted as to the markets. We cannot just stop. If you do, your business slips.

We employ our salesmen from year to year, make a contract at the end of each year with them. We attempt to keep just as small a force as I can get along with and give good service. With the large amount of business that we have, we have periods of the year which require a greater amount of time in the handling of the business than at other periods or other seasons. As to what I have to say of the ability of a commission house to so arrange its business so that they will not have fluctuations from month to month, or from season to season with reference to receipts, [fol. 1074] we have been established for 45 or 50 years, and even before my time our former president, Mr. Kelly, decided that we should be well known all over the different sections of the country and he worked to that end, and we have done the same thing since I have been president. There are certain seasons of the year, for instance, South Dakota, in the Spring of the year will ship—they feed their cattle through the winter and have them here in the spring of the year through probably April, May and June, that is Dakota time, and the Illinois will probably come in a little bit later, and then a little later Iowa and Missouri will come on, and we are pretty favorably known all over the country, have advertised and kept in close touch with our customers for years, and that is one reason that our business runs a little more regular than some of the others because when one territory runs out we are well known in the others and they will come along and fill in.

The market average for Chicago shows that 54 per cent of the cattle business comes in straight car singles, and that our average is 77 per cent.

Q. By the use of five salesmen, Mr. Fulkerson, the record discloses that you sold an average of 1,043 carloads or carload equivalents of cattle per salesman; that the market average at Chicago was approximately 394 carloads or carload equivalents of cattle. Will you indicate, if you know, how the business of your firm differs in so far as you know it, with that of other firms handling a smaller number of cars per person?

[fol. 1075] A. Well, ours come in larger bunches, straighter bunches. I mean by larger bunches, straighter bunches. We get in the spring of the year from now on

for a while, we probably get a pretty fair run of meal fed Texas, and they will come pretty good, four, five or six or eight loads in a bunch, and sometimes larger; and in the fall of the year we get a fair run of Westerns, which come in larger bunches, and then our feeders are possibly a little larger than some of the other firms; they ship larger strings of stuff. That is about the way I would figure it out.

Q. Do you employ salesmen for the reason that they can sell a given number of animals per year or a given number of carloads per year?

A. No, sir, I employ my salesmen for their ability in handling the stuff.

Q. And what do you mean by "their ability"?

A. Knowing the market and the values and pleasing our customers.

Q. The record shows that you handled in head per draft 5.82, that the market average was 4.14 does that indicate to you that your salesmen would have necessarily a greater performance by reason of that fact than the market averages?

A. It would indicate to me that we get them in a little larger bunches.

Q. And are able to sell them in larger bunches?

A. Larger bunches without sorting them quite so much.

Mr. O'Bryan: Is that all species, Mr. Boyd?

Mr. Boyd: That is cattle, only (Continuing.) That in your case the drafts per carload of cattle and calves was 4.58, that the market average was 6.85, which would indicate what, with reference to selling?

A. That we sold them in larger bunches, wouldn't it?

Q. Is that what you think is the fact?

A. Yes, sir.

[fol. 1076] Q. All of those conditions would, in your judgment, enable your salesmen to perform a larger amount of work throughout the year?

A. Yes, sir.

Q. And by reason of the fact that you cover so extensive a territory and that when cattle have finished in Dakota and start from Missouri, that you are thereby enabled to provide salesmen with a more even distribution of receipts, enabling them to have a greater capacity?

A. Yes, sir, it is having your customers more evenly distributed around in places where stuff comes from at that time of the year, that section of the year, gives us more volume.

Q. And the fact that your customers ship in larger numbers per consignment, permitting a larger number of head to be sold per sale, enables your salesmen to have a higher performance?

A. Yes, sir.

Notwithstanding our attempt to equalize the flow of business as far as we can to our concern, we cannot even it up close. You cannot help that. There are certain seasons of the year where they are short in some sections and over run in others and you cannot help those things, you have got to keep your force on hand to handle them in the case of a peak.

Q. Tell me, if you will, please, the conditions which you as a salesman of long experience and as an employer of cattle salesmen, believe must be known before an estimate as to the amount or quantity of cattle that can be sold on the Chicago market may be made?

[fol. 1077] A. Well, there is no way of estimating that that I know of, Mr. Boyd. One day we have orders or our shippers will have pretty good orders for shipping cattle and the next day they will be light on shippers, and may be the day that they have good orders for shippers the fellows on the house cattle will have light orders, and it is mighty hard to tell how, I would not know how to answer that question. I don't get the thread of it, someway, I don't believe—you better modify that and ask me it over so I can understand it thoroughly.

Q. Would you read the question?

(Whereupon the question was read.)

A. I don't think there is any way of knowing or telling how many cattle a fellow can sell or estimate it. I would not know how to. You have got so many things that come in there that you have got to analyze. It is according to your receipts, according to your demands, and take it now, we have got so many different varieties of cattle, that you have got to get buyers to buy them, that it is hard for me to answer that question correctly.

It has been my desire to earn as much money as possible for the corporation consistent with the rendition of first class service, and in conducting the business of the National Live Stock Commission Company, I have had no more employees than I thought necessary to perform that service. And I paid them no more than I believed their services were worth in that performance.

I did not spend any money that I believed was not spent in the exercise of good sound business judgment. To the best of my knowledge, the solicitation was warranted. There is nobody in this business that is doing any solicitation but what they think it is beneficial to them. I think that all of the solicitation that we did and all the trips we [fol. 1078] made were warranted, and I might also add that I think they were profitable to us when we made them. I have several requests at the office now for me to come to the country to see cattle in different spots at this time. I have a letter from G. B. Carpenter at Hamburg, Iowa; he and his son feeds about 800 cattle each year and I have a date to go out, he wrote me and asked me to come out on the 11th of August. Mr. Morgan Bohart at Plattsburgh, Missouri has also written me to come down there; he feeds about 1200 and I have other various letters there. I make a trip to each of these places each year and they look forward to it and expect me and I might also add that it never costs me a cent on earth for any automobile hire when I get to those places. They meet me and take me all over the country, and are tickled to death to have me come.

As to whether I agree with Mr. Marshall of the Wool [fol. 1079] Growers, the people that I go to see do not feel that there is too much solicitation, they always have a good chicken dinner for me and everything and they are glad to have me and always ask me to come back.

In the case of my firm the cost of business getting cattle and calves per carload, the records indicate that we expended $3.23 per carload for the year 1932; I feel that that entire expense was warranted, if I didn't I would not have put it on there, and I feel it was necessary in the service which we rendered to our customers. And necessary to maintain our business on a profitable basis. It would be necessary to pay our salesman the same salary even though they did not go to the country, because we hire our salesmen by the year. They are paid by the year.

Our salesmen are given their vacations during the lightest periods we can find, which is along about April, May, June and the first part of July, and then we aim to let them go on a Wednesday evening and probably spend the following week, give them a little extra time.

As I hire a salesman, I do not consider the number of cars he can sell at any given period. I consider his ability, his honesty, and integrity and how he will fit in our organization and with our customers. I don't employ a salesman on account of so-called business-getting ability. I always try to, and I think I have, employed salesmen that can gain the friendship of our patrons. If I were about to employ a [fol. 1080] salesman and wanted to employ an efficient man, if I knew that he had a knowledge of cattle and the ability to trade, was honest, I would not, as an incident to my bargaining with him say, "How many cars of cattle can you sell in a year?" I would figure if he had the ability he would handle the stuff, and when I hired him, I would figure he had ability to go ahead and handle the stuff and as to whether or not he had actually sold or could sell 500 or 1000 cars a year, that would not mean anything to me as to his ability. An attempt to guage efficiency of a salesman by the number of carloads he can sell a year is fallacious in my judgment.

The amount of work that a salesman can do depends upon our receipts, the condition of our market and our demand and so forth and his ability to get rid of it. I mean by "receipts" the number of different sales that will have to be made in order to sell the receipts, and whether there is heavy or light receipts in the yards that day and so forth, that cuts some figure. The general market conditions cut a big figure in that question, and on the other hand, whether he has got mixed stuff or straight stuff and so forth. That would cut quite a figure. The number of drafts or the numbers of sales would give me some idea as to the amount of time that had to be devoted to the selling of cattle.

Where we have a load of steers that has three classes of steers in them, or in the sale of them, they require the consideration of three grades, we most always sort ours, and [fol. 1081] yard them separately and sell them separately, make separate sales of them. We sometimes resort cattle into smaller bunches to please the trade, and in that case

it takes a great deal more time than if it were possible to sell them in one lot. If you have a carload of 20 steers and it will have one off-steer, the buyer will bid you with him out at a different price, most always. Sorting, in connection with selling, requires a great deal of skill and in sorting in the exercise of judgment in regard to sorting, you are able to get a better price than if sorting were done indifferently. You can sometimes get a few medium kind of steers right along in a drove of cattle and ordinarily if you take them out you would have to sell them a dollar a hundred less and they go right along with the other drove once in a while and you can get them by without sorting. Other times, our demand is such at times it pays to sort these cattle, it just depends on your demand and what kind of cattle you have and so forth in regard to your sorting and you have to use good common sense and good judgment about that.

Certainly, buyers form certain habits with which we become acquainted. After you trade with a fellow for awhile, you come to know him pretty well and understand his way of trading. That is one of the reasons why it would not [fol. 1082] be to the interest of the owner of cattle to attempt to sell his own cattle on this market. To illustrate how we go about selling cattle, we will take a carload of 18 heavy cattle. In our division Ike Brown is Armour's man, he would come down in the alley and I would take him in on them. He and I would ride into the cattle and I would price them to him and if he wanted them or thought I was pricing them close he would bid me on them, and if he thought I was asking too much on them he would inform me that he would not be any good on them and that I was crazy or asking too much, or something, and we would jockey back and forth, and maybe I would try half a dozen buyers on the cattle, and he might come back after awhile and buy them, or I would sell them to Swift or Wilson or some other buyer. They ask where they come from in the majority of times and how long they have been fed and a good many questions. He might ask my opinion as to what they weigh and what my judgment checks against his own as to their weight. Lots of times we discuss the dressing percentage. Lots of times I will say they will dress 65 or 64 and he will sometimes agree with me and sometimes he would say I was too high on them, and so forth

but that is about the way we trade on them. You have got to be a little careful sometimes in regard to telling them where they come from, and so forth, as they are a little prejudiced about their locations; some parts of the country have good corn, that is, cattle get hard and thick fat from certain sections; other sections their corn is light and chaffy, and they don't get quite so good, and a buyer likes to buy them from the best corn country he can find around.

[fol. 1083] If Mr. Ike Brown after looking at the 18 cattle decided that he did not want them, when he left the pen he would take his bid with him. That is a rule of this trade, it is all off when he rides out of the alley. We trade with one buyer at a time on any one drove of cattle. We might have another buyer looking at some other cattle that this fellow was not looking at, being shown by another salesman. Or sometimes I will show Wilson's man a pen of cattle or two up at this end, showing Armour's man one or two pens up the other way, but usually you get through with one man before you take the other one. In explanation of that, I may say that maybe Wilson has told me that he would be no good on a heavy load of cattle, to show them to everybody I would care to, and then I would halloo at Armour's man to go in and look at this load of heavy cattle.

I usually take a little ride in the morning when I think the receipts are pretty well in, and kind of get an idea of about how many different grades of cattle there are around over the divisions in the stockyards so I will be posted, and I send my other salesmen on the same excursions. If we had a large number of two, three or four head consignments, we would go through the same performance in showing them to Mr. Ike Brown that we do in the case of the 18 head.

Buyers can guess pretty closely on percentage, especially the good, thick corn cattle, they can guess on lots of them [fol. 1084] and can guess within one-half to one per cent of them, anyway. The difference in the value of cattle that look exactly the same to the eye, one dresses 60 and one dresses 63, it will be according to your quality and the cost might not be so great, but the quality might make a difference, I would say, 50 cents to one dollar difference with a three percent dressing difference. I mean in the value of the beef.

I bought steers for a number of years on this market and from my experience as a buyer of cattle, in rather large numbers, I would say that it is easier on the buying side than it is on the selling side, and my reason for that is that a buyer, when he strikes a drove of cattle that he is not very sure of, he will pass them up and not buy them, but a salesman has got to go ahead and sell those and he has got to know the value of them in order to do so. A buyer can pick and choose, but a salesman cannot. A salesman has to be prepared to sell all the classes of cattle that he receives, and he must know and be able to say at the moment what he believes to be the market price of all the receipts he gets in a day and he has got to get rid of them. He cannot leave it to anybody else.

We have several different classes of steers which we sell during the year. In the winter time the majority of our steers are beef ~~or~~ corn fed cattle, and we have the choice [fol. 1085] ones, and medium kinds and common grades, and along in the summer and fall, we have corn fed cows as well as a good many grass fed and stockers and feeders which we have to sell, and these cattle have to be sorted up and classified according to flesh and quality before selling them. The different kinds of good steers, and the difference in them, we get lights, heavies and medium weights, and I guess that would be about the classification, or in other words, we get what we call shippers or house cattle, or city trade cattle, and then some of these good cattle, our special orders, and so forth, which order buyers as well as the packers buy. Upon my examination of cattle in the morning, I must immediately classify them as to the demand that the particular cattle will suit or fit, and I must know in addition to what the quality is, who will probably be the best buyers, and the persons who are the best buyers on one day may be the worst buyers on another. Under all circumstances and at all times, we attempt to get at least a normal fill in cattle before we weigh them. The sales are made on the basis of the weight that goes over the scales, so if the animals are improperly filled, it represents a loss to the owner. Cannot afford to have a drove overfill on you, as it is worse than if they did not fill enough, because a buyer won't buy them if they are overfilled. If cattle seem to be in bad condition and we feel

it would make money for the owner by carrying them over, we do carry them over.

[fol. 1086] Monday will be our next largest day. I haven't any idea as to how many cattle we will receive on next Monday. I could guess at it but that would be as near as I could come to it, and I might be as much as 30 per cent off. You cannot tell anything about it; it is all guess work. Assuming that the National received 25 cars of cattle on next Monday, I cannot tell you anything about it as to whether we will sell them out. I would hope to sell out on Monday but I cannot tell. If I cannot tell whether or not I can sell out 25 cars of cattle on Monday and when I will do it, if at all, it is not possible for a salesman to estimate how many cars he can sell in a year. He is just guessing at it when he makes his estimate. I do not know how many cars any of my salesmen can sell on Monday of next week. I do not know how many they sold last Monday. I do not know how many any of my salesmen sold last Monday. I could tell you the total number of cars that were sold last Monday by the National by looking up the records, but after doing that I would not know how many each salesman sold.

In the case of two firms having salesmen of high standard and good reputation, in the sale of a similar number of cattle, one will be able to sell at the market and sell out early and the other will be required to hold and sell out late, that happens every day here in the yards, and the [fol. 1087] time I sell out depends upon the rapidity with which I can perform my end of the work and the willingness of the buyers to buy. On bad markets buyers deliberately hold back and delay their operations and in the case of heavy runs. They will purposely look at cattle slowly under certain conditions and do a lot of unnecessary talk or anything else to delay their operations. The purpose of that generally is to sound the market and buy them as cheaply as they can and get the fill out of them later in the day. If buyers seem to be operating slowly, we expect them to do a lot of unnecessary and unusual talking, that is one of the evidences of attempting to slow down the trade that we encounter. And they will go back and look at cattle the second time for the same purpose before they leave your

alley, sometimes oftener than that. The methods employed by buyers when they have set about to attempt to buy at lower prices, they lay back and wait and stall and won't bid you until late in the day. That does not mean they are not taking our time looking at the cattle.

You just keep working all day on them, you peddle them out here and there and there will be a lot of them they won't bid you on until right up pretty near time for the market to close, you just have to follow them around and sometimes they go to the house and eat their lunch and you go and drag them out of the office and get them down there and maybe they will bid you and sometimes they won't [fol. 1088] even bid you then. You have to do everything you can to sell out on those bad markets and once in awhile then you cannot get completely sold so you have to hold them over.

You cannot tell next Monday whether you are going to get sold out or not. You cannot tell anything about it until it is over with, because you might have to hold some of your stuff over, you cannot get satisfactory bids on it, and sometimes you have to go over to the owners, they are not satisfied, and you hold over for a day or two, and sometimes three or four; I have held lots of cattle over for three or four days at a time, and even shipped some of them back to the country after working on them for some time and we have also shippers that have forwarded lots of cattle to other markets out of here that we have worked on two or three days.

Ten cents per hundred pounds on a load of fat cattle would average around $25.00. That would exceed the commission which we charge; the smallest variation in price that we make in trading on the Chicago market is five cents a hundred. That is about half of the commission charge I would imagine. The difference between good and bad selling as to price in the handling of cattle would amount, at the minimum, to more than the entire commission charge, much more. If there is a change in rate at this market which depreciates the service rendered, if there is any depreciation at all, it would have to be more than the entire charge.

[fol. 1089] Considering that the cost figures for our firm as computed by Mr. Mudd indicates that the cost per draft on cattle for the National is $4.09, and that we are per-

mitted to charge only when the drafts exceed three, so that if there are four drafts we would collect 15¢ for that extra service, the cost would be $16.36 for four drafts. It would look to me like it would not be enough to charge 15¢. I would say that aside from the cost figures that the service charge is inadequate to pay us for the services rendered.

I am the largest stockholder of the National Live Stock Commission Company, and can fix my own salary. I do set up a figure. I do not consider that to be what I believe the Government should accept as my worth to the National Commission Company because I feel I could go out and make twice or more than I have set my salary at with another firm if I wanted to go with them. I think there are lots of good men in the yards here that I think are really good men that probably would not fit in our organization the same as they do in their own.

Cross-examination:

There are three owners in our firm. We have 500 shares of stock outstanding. The par value is $60.00 a share. I hold 315 shares, Mr. Supplee holds 125 and Mr. Cruse holds 60. They are fully paid up. I manage the affairs of the company. I advise with the other owners only. On the [fol. 1090] basis that I fix the salaries of the owners, we talk it over with each other and fix them at what we are drawing at the present time. Mr. Miles has been with me for several years. I am not very sure. Somewhere around eight years. He was head buyer for John Morrell & Co. at Ottumwa, Iowa, for 13 years, head cattle buyer. He was in Kansas City with Swift and Henry and came from there to us. He confines his activities to selling the steer cattle entirely and I do the same. I do not know that I sell any more cattle than Mr. Miles does. I superintend the selling of the steers and the odds and ends and I help the boys, even down in the butcher alley, and back and forth, and I expect I sell, yes, I imagine I sell more cattle than he does, but I cannot figure out exactly. We work on the same cattle; he and I work on the same cattle.

We both go into the pens to show them to the same buyers sometimes, and sometimes just one of us. I think he was with Swift and Henry at Kansas City for two years. Mr. Augustine sells stockers and feeders and some odd cattle. He bought for Swift & Co. a year or two. He was up in

Canada for four or five years, and I think he was at a market up there, in Toronto, and then he came back from Toronto, and he was with the Iowa Livestock for two or three years, and I hired him from them. He devotes all his time to selling stockers and feeders and odds and ends, and [fol. 1091] also I keep him in the country some, once in a while when we have soliciting trips to make which we cannot make, we will send Augustine out there. He has to do yarding and general work of all kinds. All the salesmen help with yarding, watering and feeding. Our firm maintains a regular yard force in the cattle division. We have one head yard man in the steer alley, and we have three men in the butcher alley, one with Mr. Crawford as his head alley man and one with Mr. Shorter as his head alley man, and we have a third man when we start to weigh and I let him help us back and forth with the watering until we get to selling stuff and then he stays at the scales and gets the weights, and so forth, and looks after the weighing. That is our alley force, and we get down there of a morning, the salesmen, and start and sort, and I am off and on my horse forty times before the buyers come out, watering and shaping my stock, as well as the other boys. I have all the yard men go to the chutes at six o'clock in the morning, outside of one or two of the alley men and bring over as much stuff as they can, until we get pretty well cleaned up. We sandwich back and forth with our whole bunch. We receive stockers and feeders the year around, more of them at certain seasons of the year than others.

The heavier season is from July until January. I might also add that Mr. Augustine besides selling stockers [fol. 1092] and feeders, buys our stockers and feeders. We do not maintain a separate feeder buyer. We do not have a large stocker and feeder business combined, but we have a very nice business. Mr. Shorter and Mr. Crawford are our butcher salesman. Mr. Shorter has been with us sixteen years, and he had been in Omaha selling stock for eight or nine years before he came to Chicago, and then he worked for Walters and Dunbar for three years selling stock for them, and he has been with us since then.

Mr. Crawford has been here in the yards, close to thirty years. He was with Stafford Brothers when I first knew him close to thirty years ago, and I think he afterwards was with C. E. Harding and Company, and we hired him

from Harding and Company. I imagine he has been with us close to twenty years. I personally help Mr. Augustine sell stockers and feeders. Every day I am with him and help him line up and help him any way I can. I try to keep informed as to the prices of all classes of cattle. Our main buyers of stockers and feeder cattle are our traders, stocker and feeder buyers in the yards. Of course we get some outsiders, but the majority of our stockers and feeders are sold to the traders in that business. We buy our feeders mostly from the traders who deal in stockers and feeders.

There is some material variation in the salaries paid my employed cattle salesmen. The reason is I figure some in the ability and the way of handling the stuff and so forth. [fol. 1093] These men use their own judgment with respect to the prices they ask for the livestock they handle, if they are in doubt and want any help, they come to me and I am always glad to help them any way I can. I am sure that each salesman gets the value for the livestock which he sells. One salesman probably can handle a little more stuff than the other and in some cases one has a little more ability in regard to handling more than the other, and so forth, and can probably please his customers a little better than the other, and you have got to take all those things into consideration, and also the time you have had one, probably he is an old employee, and you have had him a good while, and probably he is a little more trusted than the other, and those things all enter into your difference in salary.

Our four employed cattle salesmen at times, various times, make soliciting trips to the country. No particular one spends more time in the country than the other, unless it would be Mr. Augustine; we can sometimes on light times of the year, spare him a little better than some of the others and that is the reason we use him in the country a little more than we would our regular salesmen. They have a little more to do than he does.

I consider them all good men and pay them according to what I think they are worth to us. I could not answer whether any one of these men at the present time has [fol. 1094] more friends in the country than the others. I might say that one or two of them might have a little more following than the others or something, but as to his friends,

I could not—I feel that they are all very much liked and I don't know. When I hired Mr. Miles I had a good deal of information about him. Everybody that I asked about him and inquired about him recommended him to be a very high class man, and I had known him for years and that is the reason I hired him because he had the business for John Morrell for thirteen years and they were very well pleased with him. Naturally he would have acquaintanceship among the producers of livestock because he had been with Morrell for thirteen years, and he would naturally get acquainted with customers, or his own customers, that he bought the cattle from, and so forth. He dealt directly with the producers of livestock in the country when he bought for Morrell. For that is the way they buy their cattle. He had somewhat of a reputation as a livestock man at the time I hired him. That acquaintance and reputation was not a factor in my hiring him. I hired him for his ability to help me, but I am always glad for any one that I hire to have some trade along, that would always help, of course, but I did not hire him for that purpose. That does not enter as a factor with me in respect to the salary paid, because we have had a very nice business and I have been able to handle it alone until a few years ago my health got bad and I had to have someone to help me. [fol. 1095] I employed him about the time my health failed me. I had a bad operation twelve years ago. I tried to hire two or three other fellows at that time and afterwards hired Mr. Miles. I am not paying him the same salary now that I did when I first hired him. I have cut his salary. I paid him more up until the first of the year, I had to cut all the boys as well as my own.

I do not know how many cattle I personally sold for our firm during the year 1932. I have no way of telling how many Mr. Miles sold. That is true because he and I trade together there and he might sell one load of cattle and I would sell three over there, and he would sell over this and I would sell four or five over there in the course of a day, and the next day he will sell four or five and me one or two. I have no way of figuring that out. And that is true in respect to all our salesmen.

I could not state for the record the relative capacity for selling livestock of our different salesmen, I could not get anywhere close to it. It would be just a guess. To some

extent, their capacity for handling livestock is a factor in the salary I pay them. If they can handle more than some others on larger runs, that would cut some figure. Our cattle come from one section more than another, chiefly from the corn belt would come the majority. That would [fol. 1096] comprise the states of Michigan, Indiana, Illinois, Iowa, Kansas, Nebraska, Missouri and some from Ohio. Wisconsin and Minnesota I neglected to mention. Sometimes we receive consignments from one owner consisting of a number of cars. They may come from various points. We get lots of meal fed cattle from Texas, in fact, next Monday I will have some meal fed from Texas if nothing happens and I have got cattle coming next Monday from Colorado, southwestern, from way over the slope in Colorado. The owner has advised me that he is sending them. We will receive two loads from the Holly Sugar Company from Colorado, and I might also state that last Monday I had seven loads from Greeley, Colorado. Mr. Hays McFarland of Texas has about five hundred head. I don't know what he will ship. He wrote and wanted me to tell him what I thought about him having cattle here Monday and I wrote and said I thought it would be all right. He will ship probably three or four or five loads at a clip. That's probably the way he would ship them from down there; and Mr. Bert Carpenter that I just told you about a little bit ago, he and his son will ship about three loads apiece at a time when they start out shipping them, and we get several of those kinds of bunches along from now on. Clinton County, Missouri, will let loose a little later on and ship us three or four or five loads apiece, the neighbors do through that part of the country. It is a common practice for our customers to communicate with us in regard to the [fol. 1097] time of shipment of their livestock. They write us along as a rule some time in advance and we keep in close touch with them and they usually notify us about when they expect to come. As a usual thing they advise us about how many they are going to ship. About half our receipts next Monday, or maybe more, we will have advice on, and probably the rest of them we won't. Quite a good many of our customers are rather large feeders. These fellows that feed very large numbers, they will cut out three, four or five loads and let them come in at a time, because they don't like to disturb, if they have got say, five

hundred cattle in the feed lot, they don't like to disturb them too often. They get a little uneasy when you go to shipping them out, and they don't do quite so well. When they do start, they like to get them in fairly decent order as soon as possible. Part of the shippers await our advice in regard to shipping and part of them don't. Part of them will come on without advising you and others will wait for your advice. You cannot always tell about that. It is hard to figure out. In some territories the customer of the commission firm will tell his commission firm how many cattle he has on feed. And that they are about ready or ready for market. In lots of cases they ask the commission men to advise when to market them, but then some of those fellows will just take a chance and say "I am out of [fol. 1098] feed and I have not got time to talk, and so forth, and I will just load them and let them go."

Our receipts consist mostly of steers. We have what we would call a fair butcher trade, but I guess it will run mostly to steers, yearlings and steers. When I speak of yearlings I mean 700 to 1000-pound cattle, year old, and under, they feed lots of baby beeves nowadays, and that is what we call baby beef.

I am in the steer alley all the time, and in case Mr. Shorter gets in a couple three loads of these little light yearlings, I send the light yearlings weighing 800 and less to the butcher alley to Mr. Crawford and Mr. Shorter and in case they get bid on a drove and not sure whether they should sell them or not, they will call me lots of times and I go down and we will look through them, as we figure that two heads are better than one, and we work back and forth that way. The majority of our receipts from Missouri consist of fat steers. The Texas cattle are marketed at Chicago, the meal feds from July on, the next thirty to sixty days, the majority of them. They feed them through the winter and get them ready. There are a good many of those to come now. We have had several letters from several big outfits. The majority of feeders in Missouri, the best of them, the large feeders, start them on feed around the first of the year, feed them on grass and get them ready [fol. 1099] for about August, September, October and November. That is when we get the majority of our Missouri corn fed cattle. Of course, we get a limited number all along throughout the season, but that is our heavy time for Missouri stuff.

It is more difficult to sell a good load of fat steers on the Chicago market now than it was a few years ago. And it is more difficult to sell any kind now than it was years ago because we have not got the demand we had years ago. Things have changed since you and I were boys. That change has come along gradually. It has changed considerably since war time. I do not know hardly how to account for it. Of course these hard times have raised cain with lots of people. Lots of farmers, they are in awful shape, these farmers are losing their farms, just one after another, and these feeders have gone broke. There doesn't seem to be the demand for the meat that there used to be, but it seems to be coming back the last six months; we are beginning to get back again and everybody is feeling better now and you don't hear the complaints that you did. That condition gives us less stuff to sell and it is harder work to sell it. We had a pretty mean old trade up until about five or six months ago. It has begun to pick up.

Q. Do you recall the largest number of cars of Texas cattle that you personally sold during the year 1932 on any one day?

A. I do not, Mr. Dagger. I could not *g*ell you without looking the records up on that.

[fol. 1100] Q. I believe you stated that you could not even determine from your records?

A. I would not know whether, what I sold or anything as we are all there together selling cattle.

The volume that a salesman could sell might be a factor in his efficiency and his profitableness to me as a salesman to some extent. If he did not have a good business and we were hiring him for his business, it would be, but with us we have a nice business, and if you refer to Mr. Miles, I hired him to help tend to the business we had. I hired him to help handle the volume we had. To some extent volume must be a factor in his efficiency; you want a man that can handle some volume, some business, is broad enough to do some business. I hire our salesmen for the year, and our yardmen are hired by the month, and can discharge the yardmen at any time by giving them 30 days' notice. You haven't the least idea when you start the year what will come to you during the year. I do not know now whether we will get one car or fifty cars Monday; there is nothing certain about this business. You are just guess-

ing at it, you have to take a chance, and you have to keep your gang for fear you do get a good run, you have to have them on hand to handle this stuff when it comes. Based upon past experience that I have had in the business I feel pretty confident, in taking that chance, by maintaining this force of employees when I start out at the beginning of the year. You have to take a chance on it; we just, [fol. 1101] by past experience, figure that you can go along for another year and take a chance. That is what you have to do. A man's past experience in this business will help to some extent; we may look back and see a lot of things that we might have done that we didn't do. For a number of years we led the other firms in volume and I think for a year or two it was nip and tuck between us and John Clay; that is the old line companies, and I think we were second, probably last year. I would say for fifteen to twenty years, we have ranked either first, second or third. When we start the first of the year we just have to make a guess at what the next year's business will be, because we are not sure, but are in hopes that it will be as good or close to as good as the year before, but it is merely guess work.

I can give you a little example of why one salesman might sell out early while another salesman might sell out late. Take last Wednesday we had a fair run of cattle up in our alley and we had pretty good class of cattle. We got ahold of Swift's man who buys shippers and sold him several loads of our best shippers and we didn't happen to have many of the other grades of cattle that day, and we got out in pretty good shape. Now, if we had had a run of medium kind of good cattle that would not do for this one party, we would have been all day and probably held some of them over that night without getting them sold, but it varies that way. Now, maybe the next day [fol. 1102] somebody else would have that class of cattle and we would have the other kind and that varies that way.

The rule is to try to sell out the day they arrive, if they get in in seasonable time and your market is so you can. That is, the shipper's idea is to have them sold the day he intends them for the market. The time of day that a salesman sells his livestock does not have anything particular to do with the number of head he can sell, sometimes he has a good market and he can sell it fairly early and other times he has to peddle all day on them.

If I would reduce my force, I am afraid I could not give the patrons as good service as I have been giving. Because, our customers are used to having plenty of yard help, and plenty of help of all description; and whenever you reduce your force, you lessen your service, you just cannot give them the service. That is all, because you have to, they require more service than what you can give them with the force. Now, I have cut my yard help just as low as I can get it, but there are peak days when we have to put on extra help and so forth, and our extra help is not as good as our help that we keep regularly. They are not as reliable. If our service should happen to be impaired in any way, the shippers would probably sell their cattle to John Morrell and to those little packers all over the country; and some of them would ship to some other [fol. 1103] firm that would give them service. They want service nowadays and they don't kick on it if you give it to them, but they do kick if they don't get service. Under any circumstances, the personnel of our firm would make one strenuous effort to give the service. I have always tried to give them the best service I possibly could, and in the cases where we have seen fit to drop a yardman, our yard force has come right up to the mark, and we salesmen get out and help, bring stuff over and water it.

I will say that I am sure that I can go and get twice my salary in more than one firm on the yards, if I cared to, but I would rather run my own business. I could have gone with different firms at that or more money if I had wanted to in the commission business. He would probably figure on my managing his business and selling cattle or something that way, and he might consider all my acquaintanceship and following that I have. No doubt but what it would be of some value; if a man has been in the commission business here for 35 years like I have and would not have friends, he wouldn't be worth shooting. If you are hiring a salesman for his trade that would be a consideration, but if you are hiring him to handle your business and for ability, it is different. I could hire a salesman for both. You can marry a girl that has got money and love her just as well as to marry a poor one too. As to whether I ordi- [fol. 1104] narily figure that out that love is blind they say, and some of these cattle salesmen may be, I don't know.

As to whether I think our firm could handle more live-

stock with the same force it has now if it received it, if we could get it strung out and get it to come more evenly distributed, we no doubt could. I do not know what our peak day on cattle receipts was in 1932. There have been several days that we could not have sold more had we received more than we did. I have not any specific day in mind now. In 1932, I think I remember one day in the fall of the year when the packers came out and bought about half the crop and went to the house and left all of us with half the stuff over, and I think we had several days along there for a while that they did not near clean up.

Q. What is the least performance you would expect of one of your cattle salesmen and still keep him on the payroll as far as volume handled is concerned?

A. That is so uncertain, Mr. Dagger. Some days you would only have just a lot or two, and other days you would have a pretty liberal run. There is no way of telling that. You cannot fire a fellow because we happen to be light for a day or two or week. The next week we might be heavy again.

Q. Taking it for a year?

A. I would not know about that. There are five of us who sell our cattle.

[fol. 1105] Q. The employment of a cattle salesman or any salesmen is a business proposition, is it not?

A. Sir?

Q. The employment of a salesman by a firm which is actively engaged in business is a business proposition is it not?

A. Yes, sir, it is.

Q. Do you think there is any comparison in the employment of a salesman, and the fellow who marries a girl for money and love both?

A. I never got the girl with money.

Q. I believe you used that comparison a moment ago, did you not?

A. Yes, sir.

Q. I am interested to know whether in your opinion there is a similarity in the two transactions?

A. Well, I would think that there was a little difference between them. I would rather have the girl with money, I think.

Q. In other words, you put it on a business basis?

A. I told you in hiring a cattle man, it was a business basis, didn't I?

Redirect examination:

It is not possible nor practicable to adjust our general expenses to meet seasonal or monthly changes in commissions. It cannot be done. You have to hire the majority of your help by the year.

[fol. 1106] Mr. Frank R. Supplee, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago and am vice-president of the National Live Stock Commission Company, and one of the stockholders. I have charge of the hog department for the firm. I came to the stockyards a boy fifteen years of age, and am now sixty-two years old. I was first employed in the packing house of the old Hutchinson Packing Company and from there I went over to the hog department in the yards, where I worked, for about a year, and then I went to Omaha with the Armour and Cudahy Packing Company when they were organized, and went out there to do business in 1887, worked for them three years; then I quit and went to speculating for myself in the hog yards for a period of about five years, and then I came to work in the Chicago yards again in the latter part of 1895 or the forepart of 1896, and have been selling hogs actively in the yards ever since 1896 up to now. I was first employed by the National Live Stock Commission Company in 1905 as hog salesman and have continued in that capacity since that time. I took charge of the hog division in 1922 or 1923.

We could not have handled the business of the National Live Stock Commission Company with a smaller sales force than we had employed in rendering that service in 1932. I do not think we had more yardmen than the circumstances [fol. 1107] justified. If we had had more hogs to sell I would have had to handle them. It would be pretty hard for me to answer the question or be able to estimate the number that we could have handled in the light of what happened in 1932 over what we did handle. I cannot remember

what happened in 1932. I have trouble enough day by day up there selling this stuff. I try to forget it when I go out of the yards at night; do not know whether I could have sold more or not or what would have happened.

MR. E. G. FULKERSON, a witness called by the Respondents returned to the stand and testified as follows:

Cross-examination:

I don't think I would favor a rate on the Chicago market that would keep all the firms on the market in business on a profitable basis, regardless of how small the volume of business handled, but I would say that there is no small firm, unless it is making a living or expects to make a living, is long going to stay there when it gets to that point. I might also add that the large ones will be the same way. In fact, when it gets to a point where I cannot make money in the commission business, I am going to quit. The only factors that I know of that would determine that is whether it ever gets to a point where we run along in the red and it looks like we are going to stay that way very long. I am not going to dig up good money for bad money. I can go [fol. 1108] into other business and beat it, if it gets to that point. I might also add that I have been looking ahead with that object in view, too, if they do cut us. As bad as the farms are, I have got three of them, and I think I can make a living on the farm. I think there would be a few of what might be called one man firms operating on the Chicago market. I could not answer with regard to what a profitable volume of business would be for a one man firm. I don't know what these smaller firms consider and I would not know. I would not think they could do a very profitable business on fifty cars a year. I have no idea what would be a profitable volume, I could just judge by our own business, the only way I would have of judging anything of that kind, and we would not get very far on fifty cars. Either fifty cars per firm or fifty cars per salesman.

I could not answer as to what would be a profitable business per man for our firm because so many things depend on any one man with a firm like ours. He might claim that he has a certain amount of trade and maybe the ship-

pers are shipping there on account of me or account of Mr. Supplee or someone else handling the stuff for him, and the same way goes with the different ones that way, there would be no way to estimate that, I would not think. I would expect our salesmen to sell whatever they got and I could not make an estimate of that, I would not know. In [fol. 1109] the course of a year I would expect him to sell what we got. We are making a continuous effort to increase our business, certainly. I was away from the yards during my illness, I have had three operations. The last time I was away for two and one-half months, something like that I imagine. That was about ten years ago when I was away for three months. The last operation I had was three or four years ago.

Mr. William G. McClelland, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago, and am a stockholder and a member of H. D. Copeland & Company. Am the secretary of the corporation and hog salesman. I came here forty-four years ago as a yardman and was here some two and a half years when I began selling hogs. Have been selling hogs for about forty-one and one-half years. Have been with H. D. Copeland and Company eleven years the first of July. I sell hogs in the Northwest division and Mr. Snyder handles the hogs as a salesman in the Burlington division. I have one man helping me in the Northwest division. He does not sell hogs, he is a yardman.

Cross-examination:

I don't know how many hogs I can handle in a day. I try to handle all I get, but some days I fail at that. I don't know what percentage of the hogs received by our firm are handled by me and what percentage are sold by Mr. [fol. 1110] Snyder. I think I sell a few more than he does. He sells rail hogs—he sells all kinds and I sell all kinds. Mr. Snyder has been with the firm since 1923. He was selling hogs for John Clay before he came with us. I don't know for how long.

There is nothing peculiar about the truck business that makes it more difficult to handle than the rail business, except so many owners and different trucks, that we have got to keep, we are obliged to keep them separate.

MR. W. J. O'FLYNN, a witness called by the Respondents testified as follows:

Direct examination:

I live at 5135 Blackstone; am a cattle salesman. I first went to work as a yardman in Kansas City for Morris & Company, and then Morris hired me to buy cows. I bought cows for Morris and Company from 1906 to 1913. I came to Chicago then and took out a membership in the Traders Exchange and I traded here for a while and when the opportunity looked pretty good to buy some cattle in the Northwest I went to Montana. I came back to Chicago in 1918 and went to work selling butcher stuff for Alexander, Conover and Martin. Stayed with them until about 1921 [fol. 1111] or 1922. Then I went to the Central Live Stock and stayed there for about three years. I left the Central and went to the Nixon Livestock and stayed there until 1929. Since that time, I have been associated with Rice Brothers. For Rice Brothers I sell steers and the yearlings and heifers.

R. H. Green, Harvey Hallett and Charles Rice sell steers and yearlings. I solicit business in the country, cattle, hogs and sheep.

I have been soliciting in the country lately. In Montana and Wyoming, and parts of Dakotas. I started on June 13th and returned here July 15th. I would say that I spent 95 per cent of my time in Montana, practically all of the state. I traveled by automobile. While on this trip I observed solicitors from the Sioux City stock yards and the St. Paul Stock Yards, working for the stock yards companies. I did not see any commission men from those markets on this trip. I made a soliciting trip early this spring and solicited mostly in Pottawatamie County, Iowa. It was about two weeks.

I did not run across a Chicago solicitor on the Montana trip. I believe that the solicitation done by the St. Paul

and Sioux City yard companies attract business away from Chicago to a considerable extent. If the Chicago sommission men want to stay in business, I believe it is imperative that live stock commission firms at Chicago solicit extensively in the state I have mentioned. I think it equally [fol. 1112] difficult to sell butcher stuff or buy it. It takes more time to sell them.

Cross-examination:

I work on a commission basis. When I went to Rice Brothers I had some following. It was on the basis of that following that I was employed by Rice Brothers.

It would take twenty to twenty-five minutes to sort twenty head into four bunches. When cattle come from the Montana range country they would not be fairly uniform. In order to tell you into how many sorts a carlot of 20 head coming from the interior of Montana require, it would depend upon the kind and the weight they are. If approximately one weight coming from one owner, if I were to tell you how long it would take to sort the load of cattle, first, into how many bunches I would think they would have to be sorted; I don't know. I would have to see the cattle first. You have got to sort the cattle to the trend of the market. It may be necessary that it would not be necessary to sort them at all, and it may be you would have to sort them. I could not answer the question in what percentage of cases would require no sorting at all. I could not answer the question as to whether it would be one-half or one-quarter. I could not even make an approximation. I don't want to guess.

Cross-examination:

Q. Mr. O'Flynn, can you tell us the greatest number of carlots or the greatest number of head of cattle that you have sold any day this calendar year of 1933?

[fol. 1113] A. I could not.

Q. Could you approximate it?

A. Do you want me to guess it?

Q. No estimate it.

A. I could not even estimate it.

Redirect examination:

If a carload of cattle comes from Pottawattamie County consigned to Rice it would be my business. I could not determine how long it would take to sell it. I do not know what kind of a market they would strike. It may take but fifteen minutes and it may take all day. I have sat out there with cattle until quarter to three without bids on them. I do not think it is a proper question to ask. I do not think it may be answered correctly. I don't believe I could even make a close guess at it.

Q. What kind of solicitors would you meet? You mentioned the Stockyards Company. Do you meet anyone else or is that business solicited by anyone else?

A. Well, to explain it exactly, the St. Paul market have what is known as residence solicitors in St. Paul. They stay there all the year round, and, during, especially during the shipping season, they get from the different terminals or dispatchers the number of cars that are going to be loaded at a certain point on a certain day, and all these solicitors representing the St. Paul market and the Sioux City market and the St. Paul commission companies and some of them at Sioux City, mostly St. Paul, will be there before the cattle get in. And there are sometimes that I run into eight or ten solicitors up there and only one Chicago man. Competition is keen. They use everything [fol. 1114] humanly possible to defeat Chicago. They tell them what rotten hay we feed them down here and filthy water that is no good to drink, and they tell them it costs about fifty cents a hundred more to run them from St. Paul to Chicago, when it only costs about twenty cents a hundred more, they tell them that the shrink from St. Paul to Chicago is enormous when it hardly isn't anything, they tell them everything they can and sometimes stretch the point a little bit about the truth, and when you go up there to get business in Montana, you have a battle on your hands to drag them by St. Paul or Sioux City.

Q. Any other circumstances you have noticed?

A. I noticed there two years ago next month I was out to a place called Spear Siding. It is five miles either way in Wyoming or Montana, I have forgotten which, but it is located near a town called Lodge Grass. It is right off the Crow Reservation and we heard about these cattle going to

go out and I told my guide that I believed I would go over there tonight and see if I can land this shipment to Chicago. We trailed back in there up the creek and finally found where they were camping for the night, and I looked in there and says to a fellow, "How many cars are they shipping out of here tomorrow?" He said, "about eight." I says, "Who are all these fellows around here?" And he says, "That fellow over there is a St. Paul stockyard man and that fellow over there is a Sioux City stockyard man and this fellow here is a solicitor for a St. Paul house," and he went on, and I guess he must have named ten of them there and I was the only Chicago man.

(Record closed. Record opened.)

The witness (continuing): So, I figured my chances of getting any business out there was against me because they were a stone wall in front of these shippers all about Chicago and I didn't figure honestly that it would pay me to stay there and try to penetrate that stone wall, because it would be too tough for me, so I just pulled up camp and left.

Q. You cite that as an instance of the necessity for solicitation by commission men in the business at Chicago to [fol. 1115] prevent the business from going to some other market for sale?

A. Absolutely.

Q. Can you cite any other instance?

A. Well, the day before that, I was up in the Cheyenne Reservation and they were loading some cattle at a place called Lame Deer or close to Lame Deer, and I ran into about the same circumstance up there as at Spear Siding. So, I figured that the solicitors for both the commission men and the Stockyard Company were too thick for me and I moved north further. Lame Deer is the headquarters of the Cheyenne Reservation. These here were resident solicitors which are not permitted by the Chicago Exchange at all. We are only allowed to have two men on the road at one time and these resident solicitors stay up there all the year round, soliciting for St. Paul, and I don't know about Sioux City but I am positive about St. Paul, and if we don't go up there and combat them, our chances for business here would be pretty slim. You would hardly make your expenses on your trip.

MR. WILLIAM G. MCCLELLAND, a witness, called by the Respondents was recalled to the stand and testified as follows:

Redirect examination:

I had three double deck cars off the trains and one hundred seventy-five truck hogs today in our alley to sell. I think those hogs arrived in five trucks. I had two big trucks today. There were eight or ten ownerships in the 175 head. I sold the three double decks and the one hundred seventy-five truck hogs. The market was fifteen cents lower today. None of the double decks were plural ownership consignments.

[fol. 1116] Q. Mr. McClelland, during the month of January, 1932, according to the work sheets, Exhibit 16, for H. D. Copeland and Company, during the month of January, you sold hogs arriving in straight cars, single ownership, 4,608 head; during the same month you sold in mixed car No. 2 or from mixed cars No. 2 which includes cattle, calves, hogs or sheep, or any of those species except calves, 250 head of hogs; during the same month you sold 2,007 head of truck hogs, and during that same month you sold 376 head for speculators; in other words, the truck business was almost half as much as your single ownership rail business; and during the month of February in straight cars, single ownership, you had 2,754 head by rail; from mixed cars, single ownership, you had 223 head, and for trucks you had 2,467 head, speculators, 213 head.

A. Is that this year or 1932?

Q. 1932.

A. 1932.

Q. So that during the month of February, you had very nearly the same number of head arriving by rail as arrived by truck. During the month of March you had 3,593 head arriving by rail in straight cars, single ownership; during that same month you received thirty-one hogs——

A. Thirty-one hogs?

Q. In mixed cars.

A. Oh, I thought you were going to say trucks.

Q. And from trucks you received 1,277 head, or nearly three times as many by rail as by truck; and during that same month you sold 55 head for traders; during the

month of December of that year you had 1,019 head, single ownership, by rail, in straight cars; you had 68 head in mixed cars, single ownership; you had 1,900 head in trucks, and 114 head sold for speculators. Now with that wide disparity of trucks to carloads, mixed carloads and speculators, do you believe that it is possible for you to say that you could consider the days as you found them, taking fast markets and slow markets, and the work just exactly as you did it, or would it be necessary to know in answering such a question the variations that are brought about by the question that I have just asked which indicated to you the differences that occur from month to month; do you [fol. 1117] think it possible to say how much you could do?

A. The only way I can answer that is to say there are no two days alike.

Q. The figures indicate that the month's business varied very materially?

A. Yes, sir.

Q. Now, with reference to the drafts in those consignments, by referring to this sheet you will see that they vary to the same extent, in other words, to handle 1,277 head by truck in the month of March, you sold them in 211 drafts; to sell 3,593 head in March by rail, you had 146 drafts; so that you sold nearly three times as many hogs with half as many drafts?

A. That is very possible. That is what the records show, there is not any other answer to it.

Q. During the month of December you sold, as I indicated before, 1,019 head in 36 drafts by rail, straight car single ownership, and during the same month you sold 1,900 truck hogs with 253 drafts, which indicates another condition brought about by a difference in the mode of arrival.

A. That is right.

Q. Now, during the same month, or during the same year, the record shows in the case of mixed carloads No. 2, which contained all kinds of animals, that during the month of January you had seven single deck cars, you had 74 head of cattle, six calves, 250 hogs, and 153 sheep; during the month of May you had 149 cattle, 113 calves, 1,063 hogs, and 24 sheep, an entirely different type of mixture. Now, would it be possible for you from memory to be able to indicate in response to any question what those mixtures were during the various months of the year 1932?

A. No, that would be impossible.

[fol. 1118] Q. Sir?

A. That would be impossible.

Q. Are you able to carry them in your head now and remember what they were from the time I just read them to you until the moment.

A. No sir, I could not do that.

Q. Now, if it is not possible to carry it so short a time, how could you figure that you would be able to indicate the number of cars of hogs that you could sell when the question of the mixtures and the parcels is only one of the elements that you have to take into consideration to begin to approximate an answer to such a question.

A. I have not figured it.

Q. Sir?

A. You asked me how I figured it, and I have not figured it, I can't.

Q. You think such a question would be hopeless for you to answer?

A. Yes, sir, I do.

Q. Do you believe anybody can answer such a question?

A. I don't think they can.

Q. And do you think because somebody else answered a question that that ought to be or furnish the basis as to whether or not it can be truthfully answered, and upon which the Secretary should base a finding or an opinion?

A. Please read that.

(Whereupon the question was read.)

A. I cannot truthfully answer it. I don't know what the other fellow has answered or can answer.

[fol. 1119] Q. So that the mixtures, the differences in the business that occur, occur because the farmers in preparing their shipments for market and in forwarding them to you, choose to forward them, or must forward them at the time they are ready to market, or the time they want them marketed and in the parcels they must ship them?

A. Yes, sir.

Q. And the things that you have to do in connection with them depend upon how the farmer chooses to ship them to you?

A. I don't just get the meaning.

Q. As to sorting and the handling in the yard?

A. We have to take them just as they come.

Q. And you have no voice in the matter whatever?

A. No, sir.

Q. And as to whether or not the shipper will ship his hogs, that has a certain number of hogs to ship, will ship them in April or May, does not depend on anything you may do except in the instances where you advise them to hold for a short time or to forward somewhat sooner?

A. He usually uses his own judgment. They write to us and sometimes we advise them to hold a week or so.

Q. Now, in previous cases of this kind, Mr. McClelland, the Secretary, by some process, has determined that a certain standard of performance is necessary or should be required of hog salesmen, and they relate that in terms of cars per year, and then they find out how much annually a salesman ought to receive, and they divide that number of cars which they reach arbitrarily into the number of dollars which he should receive and thereby they find the cost of salesmanship, the reasonable cost of salesmanship. From your forty years' experience selling hogs in this stockyards, can you imagine, or do you believe that such a process is in any wise practicable or should be used, based upon the knowledge you had and received from the selling of hogs on the Chicago market?

A. I do not.

[fol. 1120] Q. What is wrong with it?

A. Well, I don't know why the Government should know what I am worth to my firm or what my salary should be. Different men have different ability, don't they?

Q. Yes. Now, with respect to the number of animals that you sell, the carloads that you may sell in a year, what have you to say about that? Let us assume they decide that based upon some evidence or theory that you should sell 1,200 carloads a year, in order to prove that you are an efficient hog man and efficient from the standpoint of a salesman on this market, what would you say about that figure?

A. I could not answer that only this way: I happen to know that in 1923, I sold over 2,900 cars of hogs, and I don't think we get 1,000 cars now for two of us to sell, and I think I am worth just as much as a salesman now as I was then.

Q. You work just as hard?

A. I work harder.

Q. 1923 is the year they fixed the rate and said the charge that you now make was reasonable?

A. I don't know.

Q. Assume that that is true, that the Government then made the rate that you now charge, do you believe that anything has transpired since 1923 in the sale of hogs that makes your service worth less to the man that buys your service than it is today?

A. I don't know what it would be.

Q. Do you believe that the charge which you make for selling one head or more of hogs by any shipper into this market is more than you believe it worth to the man that pays the bill?

A. I do not.

Mr. Boyd: That is all.

The Witness: Do you know that in handling one hog or one sheep or one calf, it goes through the hands of four or five of our men, yardmen, salesmen, bookkeepers, bill clerk, a letter to write and a postage stamp for selling one sheep or one hog?

[fol. 1121] Mr. Boyd: I know that, and I think the Government does, Mr. McClelland, at least they do now. Let us have a couple of minutes recess.

Q. You said that one time back in 1923 you sold 23 carloads I think?

A. Sold 23 carloads?

Q. On some day back in 1923?

A. I didn't say that.

Q. What did you say?

A. I said I sold over 2,900 cars of hogs in that year.

Q. Sold over 2,900 cars of hogs in that year. Do you think it physically possible to sell, for a salesman to sell such a number now, coming as you receive them and as indicated by the information which I read from your record of receipts?

A. I don't think we will receive over a third that many in both cars and trucks now and two men sell them. Perhaps we receive more than a third, but I would not think much more, and we have all we can do. I don't get a vacation any more; I haven't had a vacation in two years and won't get one this year.

Q. So that the amount of business that you did on the large days during the year 1923 represented the maximum amount that you could do with your salesmen during that year?

A. Yes.

Mr. Boyd: That is all.

Cross-examination:

Mr. Boyd quoted the receipts for me for January, February and March of last year. My time was fully occupied last year in selling hogs; practically all. I could have handled more hogs if our firm had received them in [fol. 1122] 1932.

Recross-examination:

If a firm hired a salesman and had only twenty-five cars of hogs in a year's time, I would think he would have to work much cheaper than the man who sold more, but I do not know why the rate should be different. It is evident that if a salesman handles only fifty cars of hogs in a year, the firm would not be able to pay him as much. I would say that the bigger the volume the salesman handles, the bigger salary the firm could afford to pay him. I don't think that a good salesman could afford to work for a salary that a firm could afford to pay that salesman on fifty cars of business, but some men have to work for less than they can afford to and they cannot help themselves. Under those circumstances I think it would be possible to fix a rate that would maintain all firms in business on this market. In years past the rate has given most of the commission firms a living. If a firm received only five cars of hogs, I cannot imagine a firm only receiving five cars of hogs—I wouldn't call them a commission firm. I don't know at what volume a firm could afford to hire a salesman; I don't know anything about different firms' expenses, how many salesmen they have. The only firm I have worried about is H. D. Copeland.

[fol. 1123] I don't think another firm could support a salesman on five cars of business a year.

MR. FRANK R. MULLEN, a witness, called by the Respondents, testified as follows:

Direct examination:

I live at 6718 Paxton Avenue in Chicago and have been associated with the livestock industry in the stockyards for about 32 years. I was raised on a farm and bought and shipped livestock, and all my experience in the commission business has been on the Chicago stockyards.

I started in the commission business as a yardman, and worked at that for about three years. I then started to sell butcher stuff and sold that for ten years, when I started selling steers.

I started my own commission business in 1912. The Mullen Commission Company is individually owned by me. I sell all kinds of cattle, but mostly steers. N. E. Barnes sells hogs and is the only employee I have. In 1932, F. L. Smith sold butcher stuff, R. E. Murphy was my hog salesman, and M. R. Minnick was my bookkeeper. J. L. Farren sells the sheep that are consigned to me. I am clearing my business through Gillogly and Company. I started to clear my business through Gillogly and Company the first of March 1933. I made that change for economical reasons. As to the things that caused me to change my course [fol. 1124] of business it is getting more expensive to keep an office of my own and I either had to get more business or get more pay for it. My receipts since I have changed are running about the same. Gillogly and Company does the office work and yarding for the Mullen Commission Company. We use pens assigned to Gillogly. I sell my own cattle; Mr. Barnes sells the hogs, and Mr. Farren the sheep. Mr. Mullen was temporarily excused.

MR. ROY E. MURPHY, a witness called by the Respondents testified as follows:

Direct examination:

I live at West Burlington, Iowa, and am engaged in farming. I raise livestock for the market. Fatten cattle and hogs. I patronize the Chicago and Peoria markets. I do not ship cattle to Peoria in carload lots. I ship one or two

individual animals to Peoria. I have had about eleven or twelve years' experience in the livestock business. I did for some time breed my own hogs but found that that took personal attention so in the last few years that I have not been able to give it, so I buy my hogs and fatten them. My cattle I buy from the range and fatten, all dry lot feeding. I market my steers at Chicago. I have been bringing top cattle to Chicago. I have had a large number of shipments that have been top cattle on this market. I ship them to one of the commission firms at Chicago. I have had first class service from Chicago commission firms. By [fol. 1125] first class service, I feel that I could start my cattle, my shipment or whatever it might be, to the Chicago market one morning and start the same morning to California myself, and feel that it would be just as well taken care of here by the firm that I ship to as if I were here with it.

I come to Chicago with my cattle as nearly every time as I can. I do not come so much to check up on the commission men as to get what information I can how to make my stuff better. I am always endeavoring to make my livestock a kind that will be most desirable on the market to the packer. I believe I might say that I have been successful in doing that.

I am familiar, in a general way, with the charges made by the livestock commission men at Chicago; I do not know that I can quote it to the penny, but I know about what it costs me per head and per hundred pounds, and I am fairly familiar with the charges per car, and so forth, and I would not swear that I could quote them off-hand. I have never felt that it was unreasonable in any way.

I do not feel that the charges now being made are more than the service rendered is worth to me. On the average, I have had from two to four or five carloads a year. I feel that the charge I have paid has not been more than the service was worth to me.

[fol. 1126] Cross-examination:

The cattle I ship to Peoria would be cut-outs, what we say tail enders, and which happen to be what the truckman calls the pickup loads. I ship to Peoria by truck and to Chicago by train. I ship to Peoria because we seem to get a very good market there and I can ship in less than carload lots

more conveniently than I can to Chicago. I don't believe it would be to my advantage to ship less than carload lots to Chicago. Not having shipped less than carload lots, I would not have a comparative cost on the two markets in less than carload lots to Peoria and Chicago markets.

The commission men at Peoria render me very good service. I think as good as I get in Chicago. I have not had the experience there that I have here, or had the opportunity. I suppose the oftener you ship to a place, the greater your opportunity to find men off their feet and not giving quite as good service sometimes, but their service there has been quite satisfactory. I ship yearly to Chicago from two to five cars of cattle, and I would say in the neighborhood of four hundred head of hogs a year.

I can definitely state that of the cattle I have shipped this year, two of them have been tail-enders that went to Peoria. My first shipment of hogs to Peoria early this [fol. 1127] spring, I believe was twenty-seven head. A little later I had a shipment of twenty head, and there were a few head in a pickup load.

I ship to Rice Brothers at Chicago and I always ship to the same concern. As to what induces me to ship to Rice Brothers in preference to any other firm I have always had service from that firm that I felt was without any flaws, and there used to be an old saying "better a devil you do know than one you do not." I never felt there was cause to change. Receiving what I call first class service from Rice Bros. I rather formed the habit of shipping to them. The commission men from the Chicago yards do not come to my farm to appraise my livestock. When I was going to the American Royal last fall they did. I was confirming or otherwise my judgment of the animals that I thought were fit to go to that show in a carlot class. The commission men from the Chicago stockyards have been at my farm at various times and looked my cattle over, but the visits were as much of a social nature as they were commercial. They did not solicit my business at that time. They have never had to do that. There was one other firm that came there besides Rice Brothers, but I cannot give you their name. I saw the man recently in the yards, and he came up and talked to me, but I could not give you his name. I should [fol. 1128] say that was approximately two years ago. I would not attempt to give you the date exactly.

I have no other line of business except feeding and farming. I do general farming, that means more or less jack of all trades and master of none.

I have a shipment of livestock on the yards today. It consists of thirty head of heifers, shipped in one carlot to Rice Brothers. I followed the shipment through the yards. The cattle were yarded in the pens when I reached the yards. They had been fed. I buy my stockers and feeders from Western Hereford Exchange, Davenport, Iowa. I do not buy any through the Chicago stockyards commission men, for the same reason that I have been shipping to Rice Brothers, I have found the firm I have been dealing with entirely satisfactory, and so long as they give me the quality of feeders that I want and their business methods are entirely satisfactory, I feel no reason to change.

My operations are not financed in any way by any of the commission men on the Chicago yards. I do not borrow money through any commission man. I have testified that I received what I term first class service at the Chicago yards. By first class service I mean, I feel that my stock is always very well taken care of. I have never lost—or had any crippled up, I have sent the same number over [fol. 1129] the scales that I shipped from my farm, my shrink has been very satisfactory in the majority of times. I weigh them myself before I leave home and I also know the weights that go over here, and my shrink has always been satisfactory. I have never had any difficulty in settlements. I have never been here with a shipment that I did not get as much, if not a little more, than I expected to get for it when I left home, so that would just be a few of the things that would make satisfactory service. It is a little hard to define that term.

I should think that it would be true that the crippling of animals occurs through the fault of the railroads at times. That is a matter over which the commission firm has no concern up until the time they unload them; the handling of them from there on to the pens I should think the commission firm is largely responsible for the way it is handled, for instance, coming over a slippery alley, and a slippery pavement, and things like that, it depends on the way they are handled how they get to the pens and over the scales.

Shrinkage is a great many times caused by delay in trans-

portation, I have had very few delays in transportation, however.

As to my knowing in a general way the cost of commission charges per hundred weight as well as by head, I meant to say or would state that this way; I keep very [fol. 1130] accurate account of what it costs to bring the stock in and what it has cost me per hundred pounds and per head. That is just for my information and my future shipments so I can estimate fairly accurately, then, what is going to be my marketing charges.

I have always felt the commission charges were not more than the services were worth to me. As to the basis of my opinion as to what the services are worth to me, if I thought I was being charged excessively, I would have probably started up a little rumpus about it. As to how I determine what the charges are worth to me, as I said, my shrinkage has been entirely satisfactory. The same number of head have gone over the scale. That all means satisfaction in getting as much or a little more than I expected, would put you in a pretty good frame of mind. I think those things all lead to the point of being satisfied with what you pay for a service.

As to differentiating between what it costs me and what it is worth to me, of course, that is more or less flexible as compared with the price you are getting for your livestock. I don't believe you could state it in dollars and cents. It must be more or less a flexible term. As to what factors in my mind should be considered in determining a reasonable rate, when you speak of quality of service of a commission firm, it seems to me that it depends on the temperament and the qualifications of the men who are handling your livestock very largely.

[fol. 1131] Q. What elements or factors will go to make up a reasonable rate for the service performed by the commission men? To clarify that, in your opinion, what is a reasonable charge for selling, only, performed by a commission man? Now, when I use the word "selling" I want you to eliminate yarding, I want you to eliminate the office cost, eliminate business-getting and other factors, and limit your answer for the moment to what is a reasonable charge for the selling only.

Mr. Boyd: Now, Mr. Examiner, I am forced to object.

This gentleman comes here as a patron of the market and is not offered as a cost accountant or as a rate expert. The methods inquired about used by the Government are arbitrary methods used by them. It would be just as improper, it seems to me, to ask a witness for the Interstate Commerce Commission case what he believes should be a division between the Santa Fe and the Wabash on business hauled between two points on a two-line haul. For that reason I object.

Mr. Miles: Now, Mr. Examiner, the witness has testified he thought the rates were reasonable. The counselor has testified that the way the Government fixes the rates is arbitrary and unreasonable. I am trying——

Mr. Boyd: I said what?

Mr. Miles: Arbitrary and unreasonable.

Mr. Boyd: I did not say that.

Mr. Miles: You have testified to it so many times that I may be mistaken this time.

Mr. Boyd: Maybe the witness is as well off learning that. I did not know I had said it to him or in his presence.

Mr. Miles: I say, now, if the witness believes the rates are reasonable, believes they are not unreasonable, it seems to me he must have some well defined idea of what constitutes reasonable rates, what the different factors are that constitute it. If the witness does not have that in mind, it is perfectly agreeable for him to so state.

[fol. 1132] Mr. Boyd: I believe a similar case would be in the case of a franchise for a street car company; a man pays eight cents to ride and he thinks it is worth eight cents to ride, and I suppose in order to support that opinion, he would have to show the operating cost and how much they paid the conductor in order to satisfy them it was worth eight cents.

Mr. Miles: The question is not whether or not the witness is satisfied but what makes a reasonable rate. If the witness wishes to confine his testimony to the statement that the rates are satisfactory to him, that is one thing. If he states the rates are reasonable, that is an entirely different thing. Take the ruling. No further argument.

Mr. Boyd: By government counsel.

The Examiner: Objection overruled, but I will say, Mr. Murphy, that I don't want you or any other witness to testify to anything that he does not know. If you feel that

you can answer the question, you may answer it. If you feel you cannot answer it, you may say so. Read the question.

(Whereupon the question was read.)

The Witness: Well, it is only my personal opinion that you want?

Mr. Miles: That is correct, sir.

A. I mean, you are not asking me to testify as to whether it is reasonable for everybody else to feel that way or not?

Q. That is correct. I want your personal view, and I want to know the basis for that view?

A. I think without going into or referring any further to what I have already stated as to what I considered the reasons for my feeling that the charges are reasonable, if you go to a specialist of any kind and you feel that he is doing the job that you ask him to do, and his charges are not excessive, you are satisfied to pay the price he asks. If it is not, you have the alternative of going some place else, or changing your marketing methods or your patronage methods.

[fol. 1133] Q. You have not yet answered the question. How would you determine that the charges of the specialist are unreasonable or excessive?

A. That is all personal opinion.

Q. Yes, sir, all right. Now have you any personal opinion as to the actual cost of a salesman selling a carlo-d of cattle or a carload of hogs?

A. No, sir, I don't know what his cost of operation may be.

Q. And you do not know the cost of any function performed by the commission men around the stockyards, such as yarding taken alone, business-getting and maintaining taken alone, soliciting taken alone, you do not know the cost of any one of those factors?

A. No, sir, never having used any part of that service any more than just what I have stated in the yards, having been taken care of here,—and you spoke of loan and business soliciting, did you say?

Q. Not loans, but business-getting and maintaining, soliciting?

A. That part of it has never come into my personal connection or personal operation, probably would be a better word.

Redirect examination:

My experience in the marketing and feeding of livestock is that I have been able to make a profit in my operations. I have made a very small profit in feeding cattle during the so-called depression, but it was blue ink instead of red.

Recross-examination:

As to my opinion as to why shippers ship to Chicago yards in preference to other yards, I think the larger the yard, the more competitive buying there is, and they must feel that this is a better market or they would ship to some [fol. 1134] other. The men in my community who have been shipping cattle longer than I have been in the game are still shipping to the Chicago market. I don't know that I could definitely state in detail why, but just the general statement that they must be satisfied with the Chicago market or they would find some other market to ship to. I do not know that it would be an advantage to have a head rate, rather than a carlot basis. It seems to me that that is the same as mass production, that if you could get a lot of them, you can handle them cheaper than you can just a few.

Redirect examination:

I am kept posted as to the markets by my commission man. I consider that service of value to me as a producer. I might state a little further that I never drew the line so finely to know whether that was a personal service or whether everybody got it, but I do appreciate it and I have availed myself of that. I have found it decidedly useful to me.

As to whether I feel that I might be injured by any action on the part of the Government which would limit me in the right to receive that information, you cannot very well speak about the future to what extent it might injure you, but I know that I would miss it. I know that I would much prefer to go on with the information and that branch of the service with that added item than I would without it, and I absolutely feel that if that added to my cost of [fol. 1135] marketing not more than I am now paying that

I would feel that it should not be restricted so far as I am concerned.

I discuss with my commission man what I am about to feed in the coming season. As to the kind of service I seek from the commission man in that connection, it has to do what is being bought generally throughout the country. They always say it is a good idea to buy what the other fellow is not buying, and I think he is in a better position to give me that information than I can get from any place else, any other source, because he has men coming in from all parts of the country, from the range and from the feedlots and all, and he knows about what is coming to market, and about what is going into the feedlots, probably, from the information that he gathers up from these men. I do not know just exactly what his source of information has been but I do know that the firm has always had that information available and having jotted it down from time to time I feel confident to say that their predictions have been fairly close, and that service has decidedly been a part of the things that have contributed to my being able to feed and market livestock profitably.

I will give you my opinion on why I do not sell my hogs at concentration stations to the packers direct without any person representing me as a sales agent. I do not know that this exactly covers your question, but I feel that if a [fol. 1136] man comes to me to sell me corn and my feedlots are full of livestock and my corn cribs are empty, I have a demand there and I will pay a premium price for it. If he comes to me to sell corn and my cribs are full, I am not quite so apt to pay him a premium price for it, and I believe that is just about parallel to the direct buying; if the packers have their pens pretty well filled from these concentration points, I guess that is what you call them, they are not quite so apt to go out and skirmish around and be willing to pay the price for the stock that they would if it came to the competitive market. I mean if their coolers were empty and they were not having them come directly to their pens.

I very decidedly feel that the method of selling on my part would contribute to a condition which will be detrimental to me ultimately as a producer, if the packer is able to buy the large part of the supply, outside of competitive channels. I think that it should be a matter of concern to

any man that raises hogs to keep the marketing of his product on a competitive basis.

Recross-examination:

As to what solution I have for direct marketing, I would say ship it to the terminal market.

I am not familiar enough with our Constitution or law-making apparatus to say whether or not under the Constitution of the United States that any valid act could be passed which would prevent a packer buying direct.

[fol. 1137] As to whether packers pay as much in what has been called direct buying in the country, as the market at Chicago is the same day; stating figures exactly, I could not answer that, but approximately, I think at Burlington they pay within about fifty cents of the Chicago market and it costs me approximately forty-one cents to ship to the Chicago market. So there is an advantage of almost twenty per cent there which they could easily do business on, I should think, and it would be quite an item to the producers; if we could have that twenty per cent on our operations, we would feel pretty good about it. I also feel that if all those cars were coming in here and were sold on a competitive market that that twenty per cent might increase to a good thirty per cent. Well, would it add to the supply or not? I don't believe that can quite be stated, that was the case of hogs marketed direct and on the competitive market making up the total of the day's market, so I do not know what we could quite say that it would add to the number of hogs on the market that day. I have a feeling that the added supply would not tend to reduce prices, if the added supply were shipped to the competitive market. I think that because they would have to get out and bid for them in order to get them. I am not reversing the law of supply and demand. There is no law of supply and demand. I believe there is a principle of supply and demand, but I do not know that we have any law of supply and demand. I recognize [fol. 1138] that the number of hogs on the yards would be increased if direct marketing were abolished, and I also recognize, assuming, no other factor now to be considered, that where the supplies are increased that there is a tendency to reduce the price paid, that is generally true.

In my opinion, the fact that there were added competitors in the market would tend to offset that.

MR. FRANK R. MULLEN, a witness called by the Respondents, was recalled and testified as follows:

Direct examination (continued):

I have done everything I can to reduce my expenses; and brought about the change in my method of doing business for that purpose. Between the years 1931 and 1932, I attempted to reduce and did reduce my expenses. The salaries of non-owners were reduced. The advertising was reduced. The traveling and soliciting were reduced. Rent, light and heat was not substantially reduced. It was not possible to reduce that expense and conduct my business in the way it was conducted. There was a reduction in stationery, printing and supplies, and in telephone and telegraph.

My total expenses were $31,484.16 for 1931, and $26,326.07 for 1932. On the first of this March I found that I was not making a satisfactory showing and therefore made [fol. 1139] the change. I am still soliciting my business as before in the country. I send out circulars regularly, sometimes once a week, sometimes twice, and som-times three times a week to different classes of customers. It is my opinion that that method is necessary to be employed in the handling of my business. I also do traveling.

My business has been coming from Central Iowa. My hog business that has been coming from Central Iowa, most of it is now sold direct. Recently there have been a great many cattle sold in Central Iowa direct to packers.

I still get what cattle my customers ship to Chicago. I am very often able on these soliciting trips to persuade the farmer that he would be better off by shipping his livestock to me, and in that way prevent some of the business from going direct to the packers. Shippers ask me what cattle will bring on the Chicago market, and they tell me what they have been bid at home. If it is profitable they come to Chicago with it, and I have found that based upon the bids made where shipments have been made to me that the shipment of cattle to me has proved profitable to the owner of the cattle. I have not found the reverse condition to be true after I saw the cattle and told them what they would bring.

[fol. 1140] Cross-examination:

I told you I am cleared by Mr. Gillogly, and that began in the present year of 1933. In 1932 I cleared a firm, Benton & Company, and Benton & Company's business is handled at the present time through Gillogly and Company. We both went over to Gillogly at the same time. My going over to Gillogly was a matter of necessity if I wanted to make any money. That was through because not enough business; lack of volume. Yes, it is my ambition to get a sufficient volume of business so that again I may do business on my own as I heretofore have done. In making soliciting trips in the country, I spend three days on a trip. I could not say how often I make those trips without looking at the books. There are some weeks I do not go out, and there are other weeks I will go out for three days a week. It is impossible for me to get away a great many times and that determines whether I shall or shall not go out in the country on a particular week soliciting. That is because there will be cattle coming that I know of. At other times I feel very safe in leaving Wednesday night and coming back Sunday.

I travel by both train and auto. I go to close-by territory, Illinois, and probably eastern Iowa. The farthest point I go will probably be Des Moines, Iowa. I would make that by automobile. If I were going to make a trip to Des Moines this week I would leave at 10 o'clock tonight and would reach Des Moines at seven in the morning. I [fol. 1141] would not begin soliciting immediately. I would have to get to where the cattle were before I started soliciting, probably 15 miles. I would get there about eight-thirty or nine o'clock and then begin the routine of calling on various people that I think might ship to me. I would solicit shippers if I knew they had been solicited by other commission men, and I presume they do the same to my shippers.

I suppose if I had a hundred and fifty loads a month, it would be ample to get back on my own and reestablish my own firm. As to how many I believe I would be able to handle without employing another salesman; there are two or three different classes of cattle that come into the market. If you are selling all your cattle and you should happen to get a big run of butcher stuff, that would require all your

attention, if you had a run of steers on the same day, you would not be able to give one or the other enough attention, you would have to have some help. Yes, I said if I had 150 loads a month I would feel justified in starting back into business on my own. I did not have any class or kind of cattle in mind; just taking them as they come. Now taking them as they come, it would all depend on the kinds of cattle I have, about how many I would feel I could handle before I would want or need to employ another salesman. If my week's supplies come in one day, I would have to have plenty of help.

[fol. 1142] Q. If they came to you as they did come, when you were in business for yourself, would you need any help?

Mr. Boyd: I object to the question unless the witness is told how they come, or asked if he knows how they came. I submit by examination of the work sheets——

Mr. Miles: I insist that the witness——

Mr. Boyd: —so the witness may be informed how they came, so he won't have to guess at it.

Mr. Miles: Call out the life guards for the rescue.

The Examiner: Do you know how the cattle come, Mr. Mullen?

The Witness: I never know how they are going to come.

The Examiner: Do you know how they have come to you in the last year?

The Witness: No.

Mr. Miles (continuing): You have a general idea, don't you, based on your own experience?

A. Yes.

Q. Of course you have. Now, with that in mind—

A. A general idea, I just have a general idea, of course how they had been coming.

Q. And with that general idea in mind, I have now asked you about how many carlots you would receive before you would feel that you had to take on an extra salesman?

A. Right away.

Q. What do you mean?

A. I would have to have an assistant right away.

Q. At what figures? At 150 carloads per month, is that what you mean?

A. Or even less than that.

[fol. 1143] Q. Well, how much less?

A. Well, I will tell you, if I had four loads of steers and four loads of mixed cattle, I would need help.

Q. A day?

A. Yes.

Q. Now, about how many loads of steers and loads of mixed cattle do you believe you could handle in a day by yourself?

A. It would all depend on the market conditions.

Q. You would expect to sell all that you received, whether the market be slow or fast, wouldn't you?

A. I would expect to.

Q. And you generally sell all you would receive when you were in business by yourself?

A. Generally, yes.

Q. And you carried over cattle very infrequently?

A. Yes, sir.

Mr. Miles: Now, with that situation in mind, will the reporter read the question back about four previous questions?

(Whereupon the following question was read: "Now, about how many loads of steers and loads of mixed cattle do you believe you could handle in a day by yourself?")

The Witness: Was there a question?

Mr. Miles (continuing): If you please.

The Witness: I beg your pardon, read the question.

(Whereupon the question was re-read.)

The Witness: I don't know.

Q. Have you any idea how many carloads of straight steers you could handle in a day, sell in a day, without assistance of another salesman?

[fol. 1144] Mr. Boyd: Now, Mr. Examiner, I object to that and I do not want to be accused of coaching the witness.

Mr. Miles: I am not going to accuse you.

Mr. Boyd: I think he should be given some facts about the situation.

Mr. Miles: We make no accusation.

Mr. Boyd: You will in about a minute, and I just wanted to anticipate it.

The Examiner: Do you need any more facts?

The Witness: Any more facts?

The Examiner: Than are contained in the question?

The Witness: I cannot answer the question.

The Examiner: Whether you have the facts, or do not have any more facts?

The Witness: I cannot answer, no, sir, how many loads of cattle I can sell in a day. That is impossible for anybody.

The Examiner: No matter what facts you have, Mr. Boyd raised the question that you needed more facts; and no matter what facts you have, you cannot answer?

The Witness: No, that is impossible.

The Examiner: That is all; I just wanted to know.

Really, I don't know the greatest number I ever did sell in a single day. I would not even make an approximation. I don't know how many carloads I have sold this calendar year, 1933. I would not know without looking the greatest number I have sold by carlot or by head any day this week.

[fol. 1145] Redirect examination:

If I remember, that question was how many loads would I need to open up my own business to clear the business for myself, and I answered one hundred fifty cars, but I did say that I would want additional salesmen to help do the work, whether I got one hundred fifty or whether I got fifty I would have to have help.

Recross-examination:

I would have to have help to sell fifty cars of cattle a month by myself, with whatever yard help I wanted. We don't have the same kind of cattle. The help that I would want would be a man to either sell the steers or the butcher stuff for me; having one butcher salesman, and one steer salesman, I do not know how many the two of us could care for and sell. (The witness was shown a record that on June 5 of the present year, he received seven carloads of cattle, the day of the week being Monday.) With reference to that I haven't been in the office much before three o'clock that I can remember. I don't know that particular day, really, I don't know whether I sold seven load- before three o'clock in the afternoon. It would depend a good deal on what they were. Perhaps Mr. Gillogly might have sold part of them

if they were butcher stuff, but I don't remember that particular day.

[fol. 1146] Redirect examination:

I said I had a general recollection of the way my business arrived during 1932 during the month of January that year I cannot remember the number of head, single ownership, cattle, that were sold by me during that month. I am not going to say that I can remember within five hundred head how many I sold during the month, or was sold by the Mullen Commission Company during that month. I do not remember how many I sold that month, single ownership that arrived by truck, or the proportion that one bears to the other. As a rule it takes a different length of time, in my judgment, to handle the same number of cattle coming by truck as coming by rail. It takes longer to handle the trucks.

Q. Would it make any difference in making an estimate or asking you to make an estimate to know the number of drafts into which you would have to sell, the response of the market——

Mr. Miles: What kind of an estimate?

Mr. Boyd: Sir?

Mr. Miles: What kind of an estimate?

Mr. Boyd: An estimate of the amount of business you could sell in a month, any month.

Mr. Miles: Well, now, Mr. Examiner, the witness testified in answer to Examiner's question that he didn't know.

Mr. Boyd: And I want to show the reasons, if I can, why any man would be completely at a loss to answer that question.

Mr. Miles: And getting the witness' statement, as I understand you, would prove that no man——

Mr. Boyd: Would prove that it is reasonable that he could not know, and that he has not been instructed to say "I don't [fol. 1147] know." So that the man who reads this record will understand, if you please, just what calculations a man is asked to make mentally in order to answer a question like that.

Mr. Miles: Would you care to stipulate into the record the transcript of testimony in every commission rate case

that has been heard before the Department, where a similar question was asked, a similar question answered by commission men at various markets?

Mr. O'Bryan: That is not any sign——

Mr. Boyd: No. But I am willing to stipulate into the record, if you please, that the man who answered that question seemed to answer it without regard to the things we are now raising and without taking into consideration the facts that if that had been put to them in a proper way, they would not even have made any kind of a guess or estimate or whatever you want to call it.

Mr. Miles: I do not see how you can stipulate as to what they seem to do. No more argument.

Mr. Boyd (continuing): Well, now, Mr. Mullen, in the month of January, you had 1,492 head of cattle arriving single ownership in straight cars; there were 50 owners, 50 account sales and 165 drafts; in other words in that month, there were a little over three drafts per account sale. Now do you know what business you handled in the month of May in that year?

A. No.

Q. Are you able to say the number of owners?

A. No.

Q. The number of account sales?

A. No.

Q. The number of drafts?

A. No.

Mr. Miles: Objected to as immaterial.

The Examiner: Objection overruled.

[fol. 1148] Mr. Boyd (continuing): There were 809 head, 21 owners, 21 account sales and 83 drafts, during that same month; you had plural ownership in the month of February, seven carloads of cattle in straight cars, 190 head, twenty-seven owners and fifty-nine drafts. Now, is it not true that your business comes mixed as to whether or not it came in straight cars or whether or not requiring a certain number of sales to be made in the carload, either one or more, that the business may come where there are several owners in a car, there may be more than one or as many as ten or twelve, that that requires separate treatment by you as a commission man? You handle plural ownerships different than the handling that is accorded in the case of

single ownership. You have to keep the owners separate, the identity of the animals has to be preserved?

A. Is that a question?

Q. Yes.

A. There is no question in anybody's mind that has been in this business but what a plural ownership in a car makes just that much more work; more owners there is the more work.

Q. The number of drafts into which you have to break up a shipment increases the number of sales necessary to be made to dispose of them?

A. Yes.

Q. Now, if the 1,492 head that you received could have been sold in one draft, and I mean, by that, one sale, that would have required one amount of work?

A. Yes.

Q. And if you had been able to sell them in 100 drafts that have been something different, would it not?

A. Yes, sir.

Q. And you actually sold them in 165 drafts. Now can you tell me how long it would have taken you to sell those 1,492 cattle if you had sold them in 100 drafts?

A. No, I cannot, no.

[fol. 1149] Q. And can you tell how long it would have taken if you had sold them in 200 drafts?

A. No, no one could do that.

Q. Sir?

A. No one could do that, it would be impossible. We don't know how long.

Q. Then, can you tell how many carloads you can sell without knowing all the circumstances surrounding the situation at the time, can you visualize conditions over a year and decide what you can do either during that year or during the subsequent year when it takes accountants weeks to draw off the information to tell what you actually did and record it on paper?

A. No, I cannot tell.

Q. And then the accountant knows nothing of the time it took, but simply reflects the parcels in which you had to sell your business?

The Examiner: Read the question.

(Whereupon the question was read.)

Mr. Boyd (continuing): Now, do you believe that your inability to answer the question on the part of Government counsel was due to the fact that somebody said to you you should not answer that kind of a question, or did anyone give you a suggestion of that sort?

A. Absolutely no. Nobody told me that. I cannot answer the question.

Q. Well, do you think that any thinking man can answer the question as to what a man can sell in a day and accurately reflect the facts?

A. It is impossible.

On June 5th, 1933, our firm received seven loads of cattle and two mixed loads, two pieces of loads of cattle, two part loads. I forgot to ask if there were any truck cattle on that day. That was Mullen Commission Company's individual business. But I did not find out what of [fol. 1150] that business I sold.

If I were asked a question about two loads, coming in next Monday morning I do not think I could approximate the length of time it would take me to sell them or could say with absolute assurance that I could sell them at what I believed to be the market price. The difficulty confronting me as a salesman is to get what I think they are worth.

Fred J. Shorter, a witness called by the Respondents, testified as follows:

Direct examination:

I reside at 4659 Drexel Boulevard in Chicago and am employed by the National Live Stock Commission Company as a cattle salesman, and have been so employed for something over 15 years. I have been selling cattle on commission as a salesman over twenty years. My experience has been at this market and Omaha. I have sold livestock on commission at Omaha. We get orders from time to time for cattle and I have filled orders at various times, bought cattle. I sell butcher cattle. I have sold butcher stuff for twelve years for the National. The National classifies butcher stuff as cows, heifers, yearlings, calves and bulls. I sell all the types I mentioned.

Butcher stuff pens are much smaller than steer pens.

The steers come in larger bunches than the butcher stuff. [fol. 1151] The National has two butcher alleys, and I sell butcher stuff in one alley, and Mr. Crawford sells butcher stuff in another alley.

An alley is a part of the yard that is between two series of pens, usually the pens open both ways on the alley, that is pens on each side of the alley open on to the same alley. I have only one alley in which is done all the sorting of the butcher stuff within my alley, and Mr. Crawford has a similar alley in which the work is done in that alley.

Livestock consigned to other concerns are driven through that alley during the day. The alley is used not only for the purpose of sorting out cattle but is used as a route, as a part of a route for driving other cattle of other commission firms from one place to another in the yards. That driving interrupts our work at times. When they start through the alley, we cannot get our cattle out into the alley to sort them. We have to wait until they get out of our alley or the other person has to wait until we have finished what we are doing so they can get through.

The different grades of cattle that are consigned to me for sale are canners, cutters, beef cows, kosher cows, heifers, heiferettes, occasionally we have some milk cows, not very often. And we have different values within the [fol. 1152] grades I have mentioned; and those values vary according to the age and the condition of the animal. We have all classes of calves consigned, veal calves, strong weight calves and stock calves. They come in either single or double decks. Usually they come in mixed shipments with cows and other classes of cattle.

As to how Mr. Crawford and I divide our work as salesmen in selling butcher stuff, we have two separate alleys, and we aim to handle it the best possible way, of course, not trying to crowd one a bit more than the other, that is trying to keep it evenly divided as near as we can. To a certain extent it is a question of having adequate pen room for the livestock. At times we need more pens. We have both been there a number of years, and there is certain cattle that he always sells, and certain cattle I always sell; I mean certain shippers' cattle whom he takes care of, and certain shippers' cattle I take care of.

If the cattle come from John Jones, for instance, and I have been selling his cattle for years, they put those cattle

in my pens, and if a shipper has been having his cattle sold by Mr. Crawford, they are turned over to him to handle. If he has got a good deal and I have not got much, I would take them. If I have a good deal and he has not much, he would take them. We both sell truck cattle and the same methods are followed with respect as to who will sell them as in the case of rail shipments. If the yardman [fol. 1153] is in doubt as to where to place them he will ask either one of us.

I work on Sundays during the western season practically every Sunday. I get out anywhere from six until eight o'clock. It depends on whether the cattle are in. The boys call me at a quarter to six or six o'clock and tell me the cattle are in. I go right over to the yards. Other times, if I am expecting a large shipment, I will maybe call at 5:30 in the morning and the man who is at the chutes will say they are in, I go over to the yards, and change my clothes and start sorting cattle, and I will be sorting maybe from seven o'clock Sunday morning until four or five o'clock in the afternoon. The westerns we get, the bulk are mixed steers and cows, and a good many different brands which we have to sort out for the various owners, and in some cases the owners are with them, and they don't seem to have any facilities for sorting the cattle up in the West and they just load them in the cars and leave it up to us down here to sort them for brands, and they want their own cattle together, to be sold together, they don't seem to like to have their cattle in with other cattle to be sold with some other bunch of cattle. The bulk of our westerns come from Montana. The cattle we get are pretty good cattle. They are fed cattle mostly. We don't [fol. 1154] get grassers from Kansas. In the fall of the year we get a good many Dakota cattle from the range, grass cattle.

We had a fairly large run of butcher cattle Monday. Last Monday I was out in the yards shortly after six o'clock. I got out a little earlier than usual; as a rule, I get there between six and six thirty but I was out in the yards shortly after six o'clock and last Monday was kind of a hard day to get going. The buyers kind of laid back on this butcher stuff and seemed to be waiting for them to fill steer orders more, and it made a very slow draggy trade, and it was late in the day before I got some yearlings

I had sold. I guess it was two o'clock or after before I could get Swift down my way and at that time I sold him quite a few yearling cattle. The trade with respect to cow stuff, was a very slow market, prices were not so much lower as it was a slow trade and hard to get action. Buyers would look but they would not do much bidding, and did not seem to care to buy any cattle last Monday. They would look at the cattle, you would price them, and they would not bid, and they would say, "well, I will see you in a little while." I went to Armour's office and got Armour's man out of the office and talked to him for awhile and he finally came down and bid me on some cows and after I got through with him, I went after Swift's man way up at the other end of the yards. I guess I spent probably forty-[fol. 1155] five minutes getting him down, and he stopped and looked at other cattle and had quite a few things to do before I could get him down there. It was around two o'clock I guess when I finally succeeded in getting him down and selling him some cattle. I think I did sell out on Monday. I did not sell out today. The situation today was that some of the trucks got in here rather late with stuff and it makes it rather bad. It is hard to get some of the buyers to come back out again now. Today I had—about a quarter of twelve—there was a bunch of calves come in and a couple of bulls. The bulls got in a little bit previous to that time, but by the time I went up and coaxed a buyer out of Armour's office to come down and bid me on these calves, Swift said they would not buy any more; Wilson was about through and by the time I coaxed Armour's man to come back and buy the calves the boy was working on the bull men. The bull market has been lower each day this week, and today there seemed to be plenty of bulls on hand and they just would not come out and buy them. It was not a case of price of anything. They would not bid on them. I was forced to carry them over and they are a kind, I don't know whether they will buy them on Friday. I don't know whether they will buy them tomorrow. I may have to go over until Monday with them.

It is nothing unusual to carry cattle over. The last six or seven months I have carried cattle over, I don't think [fol. 1156] there has hardly been a week that I have not had to carry cattle over. Not from one week to the next, but one day maybe or two or three days. I have been sell-

ing butcher stuff on this market for about twelve years continuously for the National. I sold steers before I went to the butcher alley.

I find that in the handling of butcher cattle, it now requires more sorting, more handling than it required for the same breed and kind of cattle five years ago. One truck will come in and maybe have five cows and have five different owners and you put strange cows in a pen together and they start hooking each other. If the owner is along, he wants them separated, wants his put in a pen by themselves. We have a great many more drafts and it is very seldom that five cows brought in in a truck will be alike. There will be some difference where the price will have to be different, making maybe five different sales. We have a greater number of owners in a case of rail cattle or butcher stuff arriving by rail than previously. I would say it requires them to be broken into more drafts for selling than previously, because they have eliminated the country buyer and now there are some of these shipping associations shipping to various farmers and each farmer will own a cow and a heifer or a bull or such things as that; there are different drafts, different owners, and they have to be sold and weighed separately; trucks the same way.

[fol. 1157] Cross-examination:

I was a livestock salesman before I began to work for the National on the Chicago market. I think it was about two years before. I was here when the war came on and I joined the Navy and I left the yards. I was selling steers, and working for Walters and Dunbar. As to whether during the period of my experience prior to the time I went to work for the National, I built up an acquaintanceship and established a sort of personal following of my own, maybe I ought to be ashamed to tell this: but when I went with the National, I expected to take all the business of Walters and Dunbar, but, to my surprise, I took none.

I was told by the National when hired by them that I was not being hired for my business but to help hold the business that they had.

I do not know how many cattle I sold personally last Monday. I really would not know without looking it up; if you had told me, I could have checked it up. I would not know off-hand. I am employed on a straight salary

basis. I am not now working for the same salary that I was when I first came with the National. I went with the National on a five year contract, and after the first year, I was to receive more for the next two years, and, then, at the end of that time, I was to receive a certain salary, and, as time went on and the business got bad, there were times that we, everyone with the firm, took a cut. It was the first [fol. 1158] of this year I believe, 1933. There were two cuts, one in 1933 or maybe the latter part of 1932; I believe they were in 1933.

I do not recall how ma-y butcher cattle the National had in its alleys last Monday. Not many of our butcher cattle come in straight, single ownership carloads. They arrive, where it is a shipping association, of course, there are a good many owners, and, if one man happens to have a load of butcher stuff himself, which is rare, why, there will be different types of cattle, cattle which he has bought here and there, and, naturally, they are different kinds.

Most of the steers of the National come in much straighter carloads than the butcher stuff.

I know how many cattle I sold today. I would not know exactly just how many I sold. I do not know how many carloads of butcher cattle my firm received today. I don't know how many cars we had total. I didn't look. We keep a list of them, but I didn't look; as far as keeping the butcher stuff and steers and that separate, we don't keep any tabs on them; we never have. I do not know how many head of cattle were received altogether by our firm today. There is usually a buyer that will give something for all kinds and classes of livestock that comes here. When it is necessary to go to the packing house offices for a buyer, I usually go myself or send my yardman.

[fol. 1159] It has always been to the best of my knowledge that a commission firm, or any kind of a successful commission firm would have a steer salesman and a butcher salesman.

Yes, I solicit business some. I don't know what percentage of my time I spend in making trips to the country for the purpose of soliciting business. I would say in the course of a year maybe a month; maybe I would say probably twenty-five to thirty days out of the year. These trips are scattered throughout the year. I go to the country to

whatever section the firm thinks it advisable for me to go. Someone else directs me in that respect. On my soliciting trips I solicit cattle, hogs and sheep.

(Mr. Shorter was temporarily excused.)

Mr. Alfred C. Baker, Jr., a witness called by the Respondents, testified as follows:

Direct examination:

I am a member of the firm of Baker Heyne and Company, a partnership. The partners are my father, A. C. Baker, my brother E. H. Baker, Fred L. Heyne and Walter B. Heyne and myself. It is not an equal partnership. The firm was established in 1906. I sell steers and certain classes of heifers, yard stock, solicit, work in the office; I have quite a little to do with the advertising of the firm, [fol. 1160] write letters to the country. My father has been in the commission business for fifty years and I have been around here ever since I was a kid, but I have only been a full fledged salesman since 1920. When I first started in the commission business I yarded stock and took care of them and helped weigh them. I did that until 1920, and am still doing it so far as that goes, but I did that as a kid around here, and then when I came to work here, I continued doing that and I sold hogs for a whole year. I started selling cattle by selling odd steers, and after that I started to sell all kinds of steers. My father and Fred L. Heyne also sell steers for the firm. E. H. Baker sells hogs and yards hogs and works in the office; A. C. Baker Sr. sells cattle, steers, certain grades of heifers he sells also. F. L. Heyne sells steers and certain grades of heifers. W. B. Heyne is a hog salesman and a member of the firm. John L. Baker is no relation, he is not with us any more, he was a yardman, but he was with us during 1932. R. Briggs is an all around yard man and works in the cattle alley and hog alley and helps out with the circulars, assists in the office and lines up the trucks and looks after the feeding of cattle that come in at night and so forth. J. Gerlock is the butcher salesman, and he also yards and [fol. 1161] assists in the office. W. A. Shirley is our bookkeeper; C. Vangier is the office man and looks after corre-

spondence under our direction. V. Bartee has been an office man until about the first of the year, and we use him as a yard man now in the morning and as an office man in the afternoon. T. Sheehan is the extra man at the scales. Works for different concerns. F. Marsch is our sheep salesman, Art Slaughter is the check-up man; we have a man by the name of F. Speck at the hog scales in the Northwestern division. We have to employ extra help. We do not divide up the work in handling steers. We all work together on steers. On Monday, after we got the check-up from the Stock Yards Company, and John Gerlock, takes certain steers or butcher stuff to the alley, or whatever the case may be, and I take certain yard loads to the alley, and Fred Heyne does the same thing, and we usually sort the cattle, either Heyne and I, or John Gerlock, and then we split them up in strings and after that we have them all set in the pens when Father, Fred Heyne and I walk through the cattle to determine values, consult one another on them, get the various opinions as to what they are worth, considering market conditions, and the kind of cattle, and very often we have five or six loads of heavy steers; Fred Heyne will take those particular steers, and [fol. 1162] may have my father take the yearlings, I may take the stockers and feeders—it just depends upon the number of cattle we have, and the number of cattle on the market, the weather conditions and other things considered. Fred Heyne may show and sell the heavy steers, and then again, he may show them and I may sell them. He may have shown them to three, four or five or six men and I may then complete the sale. We receive cattle from Indiana, Illinois, Iowa, Wisconsin, Minnesota, North and South Dakota, Montana and Wyoming, and Missouri and Kansas. I would not know from what place we receive the most of our cattle, without looking at the cattle, because I never keep track of the number of head or anything like that. We handle quite a few western cattle from Montana and Wyoming. They usually start in the fall of the year, sometimes we get them as early as June, extending until the latter part of December. The conditions that exist in the States from which they come change the dates and time and months of marketing—there are water conditions to be considered, range conditions, financial condition, market conditions.

Our receipts vary from month to month according to those conditions. The conditions that would affect the marketing of cattle from nearby states would be the same as I have stated:

[fol. 1163] Q. I notice, Mr. Baker, that, during the month of January, cattle received in straight cars, single ownership and plural ownership, compared one with the other, one class of business with the other, that during the month of January, 1932, you had 558 head straight cars, single ownership, requiring twenty-one account sales and sixty-six drafts; and during the same month you had 203 head, plural ownership, requiring fifty-one account sales and ninety drafts; and, during the month of September, you had 951 single ownership cattle requiring thirty account sales and 122 drafts; during the same month you had 1365 plural ownerships, that is, head of plural ownership cattle, requiring ninety-three account sales and 251 drafts; in other words, there was a decided difference in the way your receipts came from month to month. In the month of January, you had over twice as many single ownership cattle as you had plural ownership. During the month of September, you had about fifty per cent more plural ownerships than single ownerships. What causes the variations, those wide variations in your receipts?

A. There is no rule to go by. I would not have any idea of that.

Q. So you cannot tell, in the handling of your business whether that variation will exist from month to month or from year to year?

A. No.

Q. Do you know the condition or do you now recall the condition under which you sold the 1365 plural ownership cattle during the month of September?

A. No, I don't.

Q. Do you recall the conditions under which you handled the 203 head during the month of January of that year?

A. No.

Q. Do you know how long a time was required to handle any of the animals mentioned to you as arriving in 1932?

A. No, I haven't any idea.

[fol. 1164] Q. Is there any means by which you can determine that fact at this time?

A. Accurately?

Q. Yes.

A. No.

Q. During the month of April, 1932, you handled 294 head of straight cattle, single ownership, necessitating fifty-eight drafts, and comparing that with January, you handled 264 head more cattle in the month of January with only eight more drafts than were required to handle the 294 head in April. Do you know why it was necessary——

A. No.

Q. —to have a greater number of head per draft in January than in April?

A. No, I know the things that may determine that.

Q. What are those things, Mr. Baker?

A. Maybe market conditions, it may be that we just happened to have certain straight feeder loads, there is no particular way to figure it or rule to go by.

Baker Heyne and Company, in the employment of its help, is required to maintain the force throughout the year. And the salesmen, and the yardmen and the office men are maintained from year to year. We could not get along with any less people than we have got, the way it is now, we could not do any more, I don't think.

Q. The analysis that has been made by the Government indicates that during the month of January your total commissions were $4,600; that in April it was $2,600; in July it was $2,000; and that in September the amount jumped to $5,100; the month of November was $4,900; and the month of December dropped back to $2,300. What do you do to attempt to make the months' income as uniform as possible?

[fol. 1165] A. Well, we put forth every effort to get out in the country and get as much business as we can to keep the light months up.

Q. But you are not able to accomplish that?

A. No.

Q. And, by the exercise of any effort known to you, it is impossible to overcome that fluctuation?

A. No, it is not possible.

Q. But your expenses are more or less fixed from month to month?

A. Yes.

Q. That is, certain parts of the expenses are fixed?

A. Salaries are all the same, and rent, and things like that.

In the matter of travel, the members of the firm usually get together and decide where a solicitor will go. Sometimes we have letters from the country requesting us to come down and look at their cattle and we don't like to send a man down to look at one small bunch of cattle, but, if we can figure where he can go down to see his cattle and acquire some other business, and we think it is profitable to do it, we send that man in that particular territory and most every trip that is made is usually prearranged by the members of the firm so as to avoid spending any unnecessary money or time and accomplish the greatest results. They solicit all kinds of livestock.

[fol. 1166] I couldn't say in what states our solicitors spend most of their time. As to where I spend most of my time, I spent twenty days divided between Illinois and Iowa, and about thirty-five days in Wyoming, Montana, North and South Dakota. It just depends upon the conditions in the country to which I travel and where the business is and what our customers are and what their problems are.

My last trip to the Western territory was last August. I was in one town, Baker, Montana, and there were eleven solicitors there from St. Paul and Sioux City, I do not know how many from each place, but there were eleven there working on one string of cattle, and nearly everywhere you go St. Paul has two Stockyards Company men and they work practically all the year around for the Stockyards Company at St. Paul and Sioux City, sometimes have one and sometimes two, but they seem to work up in my territory, and then there are solicitors for the various firms out of these markets who are not supposed to, but they also solicit for this market, and these solicitors have this market, most of them are from St. Paul, Sioux City, Omaha and Denver, working in the territories I work. I come in contact with other solicitors from this market. I would say one or two of the boys that go from here that I know.

Notwithstanding the presence of other solicitors at Baker, I was able to get three or four cars. It was due to

the fact that they had the class of cattle that I was positive that would sell for more down here and the men be-
[fol. 1167] lieved what I told them. If I had not been there, I would not have gotten any of them.

I would say that it is 1200 miles from Chicago where these particular cattle were. In soliciting I go from Glacier Park to Wilson, N. D., on the Great Northern, and I cover Great Falls, the Judith Basin and down in that Baker territory, and from Billings and Helena and I don't scratch the State as far as covering the whole state is concerned. If I didn't make the trip we wouldn't have any business up there in a couple of years; it would probably go to St. Paul, Sioux City or Omaha or any one of those other markets. I know that none of the traveling that I did during the year was unnecessary.

I know the results justified the amount of money which I spent. We all try to be very careful and not spend any money unless it is necessary. I was not wasteful or extravagant with the money that I spend while I was on that trip. No other person with our concern was soliciting in Montana or in Wyoming. We don't send a solicitor to Kansas; my father has some friends down there of his that he had had for fifty years; we don't get much from Kansas.

We sent Mr. Gerlock to Nebraska and he had difficulty in getting the cattle by Omaha. We receive truck cattle that are sold by us in Chicago from Indiana, Illinois, Wisconsin and Iowa.

[fol. 1168] Q. In the case of single ownerships in cattle the average for your firm was 9.2 head per draft and 2.6 drafts per car, single ownership. In the case of plural ownership, your yearly average was 2.9 head per draft, 10.2 drafts per car. In the case of your mixed cars single ownership cattle you had 3.3 head per draft and 11.1 drafts per car. In the case of mixed plurals, mixed cattle, plural ownership, you had 2.8 head per draft, 15.2 drafts per car. Drive-ins, reduced to carload equivalents, you had 1.5 head per draft and 22.1 draft- per car. In the case of seconds, reduced to carload equivalents, you had 3.2 head per draft, 8.2 drafts per car. In other words, your drive-ins were almost ten times as great in drafts per car and a seventh as great in the head per draft. As in the case of straight car singles. Now, in the number of head single ownership,

as compared to plural ownership, you had 6,703 head of single ownership and 13,307 plurals, almost twice as many plural ownerships as you had single ownerships, and you had over six times as many drafts in the plurals as in the singles, your average number of cars per salesman is 246 during the year 1932, as compared with the market average of salesman handling cattle of 394 cars. Assuming that the statistics which I have read you are correct, I will ask you to explain why, in your opinion, if you know, the salesmen for your concern handled fewer cattle, on the average, than the market average?

A. I do not know anything about those figures, statistics. Our salesmen handle all the cattle they can get. That is all I know. I could not follow you on all that stuff, Mr. Boyd.

Q. Do you think it has always been true that your single ownerships are half, were half of the amount of number of head of plural ownerships, or has there been a difference in that during the past several years?

A. Well, we have actually never kept track of any, Mr. Boyd, I could not tell you how many cattle I sold or the number of head.

Q. While your business in cattle, single ownership, is [fol. 1169] only half as much as the business you sold that were plural ownerships, the National handled twelve times as many single ownership as plural ownership. Do you believe that a salesman, based upon your experience, do you believe that a salesman can handle more cattle in a way that they have to be handled on the market, if they arrive in the manner in which the cattle arrive and are sold by the National than in your case?

A. Well, it is just according to the measuring rod there, of how they are handled and so on and so forth.

Q. Well, the number of ownerships, the plural ownerships to single ownerships, would have much to do with the number of sales necessary to handle the same number of cattle, would it not?

A. Yes, sir.

Q. So that if you had twice as many plural ownerships as you had single ownerships, and the National had twelve times as many single ownerships as they had plural ownerships, do you not believe it would take you a great deal longer in time, the number that you could handle, without taking into consideration any other factor?

A. Yes.

Q. In the case of the market average, I gave you 394 cars as the average per salesman. I gave you your firm as two hundred forty six. Now, in the case of your firm, you had twice as many plural ownership cattle as you had single ownership. In the case of the general market, there are four times as many single ownership as plural ownership. Do you think that that might account, or does that account, in your judgment, for the fact that your average was two hundred forty six as against the market average, or have you any opinion about that?

A. I have no opinion.

Q. Do you believe that it would be fair to take receipts where there is such a variation as between that of your firm and that of the National as to single ownership and plural ownership in the amount of work that would have to be done incident to that difference, on account of that [fol. 1170] difference, to find that a salesman would be required to handle the same number of cars of the kind that you handle in the same length of time that it takes the other man to handle them?

A. I cannot see, there is no rule to go by to handle cattle; that is something that you cannot require anybody to do anything or expect anybody to do any certain amount.

Q. Now, the National average is high on this market as compared to the market average. You had less, you handle less cars per salesman than the average, the National handled more per salesman than the average. Do you not feel that the class of receipts, that the way in which they arrive, the number of sales that have to be made in order to dispose of cattle will have much to do with the amount of work that a salesman may do in a day, and that the difference may be accounted for by the actual receipts that were received during the year, coupled with other conditions that confront a salesman from time to time?

A. I do not think that there is any rule to go by in these plural ownerships or carloads or anything; you cannot tell a thing about it. It just depends upon the cattle market, the weather, and there is absolutely no rule to go by at all on one or the other.

Q. It may take a short time to handle a carload of steers on one day and a long time to handle the same kind of a

carload of steers on another day?

A. Absolutely.

Cross-examination:

As to who is the responsible head, responsible manager of the firm, I think my father and Fred Heyne are; I don't really know how to answer that question because in some issues, nearly every issue that comes up relative to finances, [fol. 1171] trips and everything else like that, everybody voices their opinion in the partnership and they try to do what they think is right. They don't usually do anything that any partner objects to if the partner can give good reasons for his objections.

As to how we determine whether an extra man should be taken on, somebody in the partnership would suggest a certain man and we would all talk it over and determine how cheaply we could hire this man and whether he would be a good man for us, and if we all thought he would be a good man and worth the money, we would put him on.

Our firm is the kind of a family affair, and if Fred Heyne for example, thinks that I am not getting enough money, he is liable to raise my pay next month. He will tell my father "I think Alfred ought to get more money," and he will probably raise my pay. We don't have any articles of agreement or anything like that. We are just a family affair and we talk the thing over and change it so that everybody is satisfied. In our outfit the salaries are based on just an ordinary fair living. When I draw money for my soliciting trips nobody ever questions any of the money I draw. I draw whatever I think I need, and I keep track of the money I spend, and when I come back off a trip, I tell the bookkeeper that my expenses for a particular trip [fol. 1172] was so many dollars. Nobody ever questioned my expense and I have never questioned any other member's expense. The firm pays all the expenses of traveling.

If I am informed or know that a shipper has been solicited by another firm on the Chicago yards, I certainly solicit that farmer. I don't know anything about what other commission firms do as to soliciting my business. I have met solicitors representing other commission firms doing business on the Chicago yards.

F. J. SHORTER, a witness called by the Respondents was recalled to the stand and testified as follows:

Redirect examination:

Before I left the stand yesterday I was asked to return and bring with me the scale tickets and the acc-unt of sales covering the business handled by me as well as the business handled by Mr. Crawford, the other butcher salesman, and I have done that. These are the tickets and account sales in front of me. I have made a pencil sketch of my butcher alley. I have but one copy of it. Respondents' Exhibit No. 7, being sketch of Shorter's butcher alley and pens was marked for identification.

Respondents' Exhibit No. 7 for identification is a sketch, showing the pens and alley I am in, runs east and west, have a short alley ru*n*inning north and south which con- [fol. 1173] tains six catch pens used for a few odd head of yearlings or calves and bulls, whichever we may need it for. The main alley is open at both ends. The west end is as you come out of our steer alley and the east end is leaving our pens entirely going into another firm's alley. The original scale tickets which I have brought with me are the original record which we maintain in our office. We are required to keep these records on file.

The account of sales are the originals. The first ticket is for one Holstein bull out of pen 57. The weight is 1250 pounds, it sold at $3.25 a hundred and the owner is Eno Saabo. The sale is listed on account sale No. 97, that is the fifth item on the account of sale. Scale ticket No. 2 covers two cows, Holsteins, weighing 1770, sold to North American, price $2.10. Scale ticket No. 3 covers three calves weighing 432 pounds, sold to Siegel and Weller, sold at 6 cents. That is the last item on account ssales. This is part of a mixed shipment. There were hogs in the shipment but I didn't handle them so I didn't bring the hog tickets. That is covered by scale ticket No. 3, so that tickets Nos. 1, 2 and 3 cover all the cattle on account sale No. 97.

In the case of scale ticket No. 1, covering one Holstein bull, it was yarded in pen 57, a catch pen, and is indicated with the figure 1 with a circle around it to indicate that pen. The animals on scale ticket No. 2 were yarded in [fol. 1174] Pen 37, which is shown with a circle 2 on the

sketch. And the three calves were yarded in the same pen as the bull, pen 57, indicated by a circle 3 on the sketch.

Account sales No. 337 is a truck shipment from Abe Karlinsky, consisting of one brindle heifer, weighing 1140 pounds, sold to Hammond at $4.35, indicated by figure 4 on the scale ticket. Ticket No. 5 covers one roan bull weighing 1580 pounds at $3.50 sold to Brown and Smith.

Ticket No. 6 is for one horned cow, weighing 1440 pounds sold to Hammond at $3.50. That is all the cattle there are in that shipment.

The animals covered by scale ticket No. 4 were yarded in Pen 38 front. No. 38 is the pen with a front and a back; there is a gate in the middle. That is indicated by a circle 4 on the chart. The cattle on scale ticket No. 5 were yarded in catch pen 52, indicated by circle 5 on the chart. Scale ticket No. 6 covers the horned cow, and was yarded in the back of pen 61. The reason we could not put this cow and heifer in the same pen was that this big horned cow was hooking the rest of the cattle up. That is indicated by circle 6 on chart.

Account sales 339, covers one calf weighing 210 pounds, sold to Shannon, at $6.50. It is covered by scale ticket No. 7 and the animal was yarded in pen 59, catch pen, indicated by circle 7.

[fol. 1175] Account sales No. 338, James Long, arrived by truck, consisted of two cattle, one blue cow weighing 1270 pounds sold to Armour at $3.65. That is scale ticket No. 8. And one red bull weighing 1580 pounds, sold to Brown and Smith at $3.25. Scale ticket No. 9. The animals sovered by scale ticket No. 8 was yarded in back of pen 38 indicated by circle 8; the animals shown on scale ticket No. 9 were yarded in pen 51, a catch pen, indicated by circle 9.

The next shipment is covered by account sales 336, H. A. Linne, one steer weighing 1470 pounds, sold to Hammond at $4.25. It is scale ticket No. 10. Two red cows weighing 2110 pounds, sold to the Crescent Packing Company at $3.50—scale ticket No. 11. Two cows, weighing 2250 pounds, sold to A. Livingston, at $3.25—scale ticket No. 12. The one steer was in pen 49, front, indicated by circle 10. The other four animals, two and two, were all in the same pen, 61 front. That is indicated by circle 11 and 12.

The next shipment was from Vern Hamilton, a truck

consignment from Gennessee, Illinois, consisted of two cattle, one roan bull, weighing 1470 pounds, sold to Armour & Co. at $3.35. It was yarded in pen 58, catch pen, indicated by No. 13. I did not sell the other animal. I think it was sold by Mr. Crawford.

[fol. 1176] The next is a mixed shipment of cattle and hogs, W. M. Boose, arriving by truck; it contained one cow, two calves and six hogs; one roan cow weighing 1070 pounds sold to Swift at $3.35,—No. 14, was penned in catch pen 50, indicated by circle 14. Two calves, sold to Empire Packing Company, weighing 550 pounds at $5.50, scale ticket No. 15; it was yarded in pen 50 the same as circle 14. I have marked this circle 15 on the chart. That completes that shipment.

The next shipment covered by account sale No. 344. Arrived by truck from Conard and Davis, Salem, Iowa, contained 13 calves. Individual checks were written and mailed to Conard and Davis; they then distributed the checks. This is a co-operative shipment; there are six calves weighed out for Morris, the other seven calves were weighed together and the shrink is prorated through the entire shipment. There is one calf weighing 120 pounds with three clips on the back, and one calf with X on the left hip, weighing 180 pounds, sold to Armour at $3.50. I have marked that scale ticket No. 16. The next scale ticket covers one calf weighing 240 pounds, XI on the left hip, one calf weighing 230 pounds, one slash on the left hip, selling to Armour and Company at $4.50. Have given that scale ticket No. 17. One calf, V on the left hip, weighing 170 pounds one calf with three clips on the back, weighing 130 pounds, sold to Armour at a nickel a pound. Am giving that No. 18. The other seven calves were weighed to-[fol. 1177] gether and they weighed 1250 pounds, sold to Armour and Company at six cents. Am giving that No. 19. The animals shown on scale ticket No. 16 were yarded in pen 51, indicated by circle 16 on the chart. Scale ticket 17 was yarded in pen 51, indicated by 17 on the chart. Two calves weighing 300 pounds, No. 18, was yarded in pen 50 and shown with circle 18 on the chart. The 7 calves were also yarded in pen 50 and is shown as circle 19 on the chart. These calves did not arrive until a quarter to twelve and by that time, a good deal of the other stuff had been weighed out, so we had to use those other pens again.

Account sales No. 98 covers two bulls which I handled that I did not get sold that I carried over and sold them this morning. That consignment came from Columbus Junction Shipping Association, Columbus Junction, Iowa, and arrived by rail. The balance of that stuff was cows and heifers and steers, and there was one cripple down at the chutes, had to be hauled out and sold down there. I sold that one at the unloading chutes, however. Of the Columbus Junction shipment, I sold one calf to Swift, 150 pounds at $5.50, shown by scale ticket No. 28. That was penned in pen 41, and is shown by circle 28 on the chart; one calf to Swift weighing 90 pounds at three cents, scale ticket 29 was put in the same pen, No. 41, shown by circle 29.

[fol. 1178] Account sales No. 96 is from Edgerton Farmers Warehouse Company; a mixed shipment by rail, containing cattle, hogs and calves. I sold the cows and the calves; one cow sold to Wilson and Company weighed 1210 pounds at $3.15—scale ticket No. 20. Scale ticket No. 21 covers one brindle cow sold to Wilson and Company weighing 960 pounds at $2.75. No. 22 covers fifteen calves sold to Swift & Co. weighing 1970 pounds at $6.25. Scale ticket No. 23 covers six calves, weighing 570 pounds sold to Swift and Company at $4.50. That is all of that consignment that I sold. There were five steers sent to the steer alley. Scale ticket No. 20 penned in 43, indicated by circle 20. The other cow was also placed in the same pen indicated by circle 21. The 15 calves and 6 calves were all yarded in pen 51, catch pen, indicated by circles 22 and 23.

No. 95 was a load of cattle by rail, consisting of cattle and calves. I sold three calves out of that shipment, which consisted of cows, heifers, heiferettes and calves. The three calves I sold—two calves weighing 330 pounds to Swift at six cents is scale ticket No. 24. One calf weighing 110 pounds to Swift and Company at four cents—scale ticket No. 25. Scale ticket 24 was yarded in pen 57, a catch pen, indicated by circle 24 on chart. The other calf was also in the same pen, circle 25.

[fol. 1179] Account sales 88 covers 65 heifers. I sorted them in two bunches, covered by two scale tickets. The first scale ticket No. 26 covers 39 heifers, weighed 29,300 pounds, sold to Armour and Company at six cents. Scale ticket No. 27,—26 heifers weighing 17,380 pounds sold to Armour and Company at six cents. I sorted these heifers,

as you can see, there is quite a bit of difference in the weight of them, and the buyer had me weight them just the way I had them sorted, in two bunches, on account of the difference in the weights. These two loads of cattle were shipped by rail to another commission firm on Wednesday, arriving on Wednesday. They did not get them sold and the owner of them wired me to take them and sell them, and the firm turned them over to the National, so I went ahead and sold them. These animals were penned, scale ticket No. 26, in pen 47, front and back, indicated by circle 26. Scale ticket 27, containing 26 cattle, yarded in pen 48, shown by circle 27.

The next account sales, No. 200, covers one steer, belonging to Siegel and Weller, local packers. It weighed 770 pounds, and sold to J. B. Keller at $5.25. It is scale ticket No. 30 and was yarded in pen 62, shown by circle 30. [fol. 1180] The next account sales, No. 199, covers five cows sold for one of the traders, on two scale tickets; No. 31, three cows sold to Hammond, weighing 3700 pounds at $3.50; No. 32, two cows sold to Swift weighing 2350 pounds at $3.10. Those covered by Scale ticket 31 were yarded in pen 39, indicated by circle 31. Ticket 32 yarded in pen 60, indicated by circle 32.

The next account sales 198 covers seven cows sold for a trader. The first ticket, one cow weighing 1170 pounds sold to Hammond at $3.50, covered by scale ticket No. 33. Ticket 34, one cow weighing 1260 pounds, sold to Swift at $3.25. Ticket 35, one cow weighing 1050 pounds sold to Wilson at $3.25. Ticket 36, three cows weighing 2930, sold to Wilson at $2.90. Ticket 37, one cow, weighing 940, sold to Armour at $2.90. Those seven cows belonged to Mike Nolan, a local trader. Ticket 33 yarded pen 40, circle 33; ticket 34 yarded pen 37, circle 34; ticket 35 yarded pen 42, circle 35; ticket 36, yarded pen 42, circle 36; ticket 37, yarded pen 62, circle 37.

That covers all the cattle I sold yesterday, July 20, outside one crippled calf. The animal on ticket No. 1 was down at my pens before seven o'clock. The cattle, bull and calves came over to the alley together, and one of the boys took this bull and put him in a pen by himself. In connection with that bull, I showed the bull to Armour's buyer; [fol. 1181] he did not bid anything on it. He looked at it and said he wanted some better bulls. He did not ask me

to price the bull. I next showed him to a couple of yard traders who did not seem even interested in it. He was kind of a thin Holstein bull. I then showed him to Harold Brown to whom I sold him. I priced him at $3.60 and Mr. Brown paid $3.25 finally. I had some discussion with Mr. Brown about the price. I was trying to get him to put on.

The animals shown on ticket No. 2 that were penned in pen 37; they were two thin Holstein canner cows. Both of these animals were together when I first saw them. I showed them to various buyers but they were two very thin cows and some of the buyers would not bid on them. Armour bid me two cents a pound for them in the morning, and finally I got a speculator and he bid me $2.10 for these cattle. After showing them to various ones, I finally got Armour's man back and told him I was bid a dime more for the two cows than he bid on them, and, if he wanted them, he could have them. He finally said, "go ahead and weigh them." I probably showed them to four or five different buyers during the morning.

Scale ticket No. 3, they were three Holstein calves. I showed them to Swift's man, I showed them to Eddie Shannon, they both bid $5.50 for them. I finally sold them to Morris Weller at six cents.

[fol. 1182] Scale ticket No. 4 was a brindle heifer; showed it to Wilson, Swift, Armour some of the local traders. Wilson's man said it was too heavy, he couldn't buy it; Armour's man bid me $4.25 for it; I offered to take $4.50; and later in the day, I got Swift's man back and sold it to him for $4.35.

Scale ticket No. 5, one roan bull which I sold to Harley Brown. He is the only man I showed him to; the owner was there and seemed to think it was a very good price and I did myself so I sold him.

Scale ticket No. 6 was one big horned cow that was hooking everything, and I was bid $3.25 for that cow by Armour's man; Wilson's man bid $2.75 for it; the traders wouldn't bid on it; I finally sold it to Swift for $3.50.

Scale ticket No. 7 was a roan calf sold to Shannon. He was the only man I showed the calf to. Sold him for $6.50 which is quite a bit better than the calf, and certainly it was time to sell him. Shannon only buys a few calves and when he buys a few you could not go back and even weigh him one calf the way he bid you.

Scale ticket No. 8 was a big blue cow. I showed her to different ones, some of the traders, and I did not get anything bid on her, and I finally sold her to Armour for $3.65. [fol. 1183] Neither Wilson or Swift showed any interest in her, it was a fat cow, but kind of ill shaped.

Scale ticket No. 9 was a big red thin bull. I sold to Harley Brown at $3.25. Showed the bull to Armour's man and he said it was not the kind he was looking for, and other bull men didn't seem to be interested in it, so I sold it to Harley Brown.

Scale ticket No. 10 was a big roan steer that weighed 1470 pounds. Swift's buyer bid me $3.50 and Jakey Jacobs with Wilson bid me $3.50. I finally went to get another one of Swift's buyers and coax them to come down and look at the steer and told them it was a very good friend of mine that owned the animal, and what a good animal it was, and after I finally got him down there, he sat on the fence and laughed and told me to go and weigh it at $4.25. It was 75¢ a hundred more than anyone else would give.

Scale ticket No. 11 was two cattle I sold to Crescent Packing Company. We had four cattle in that pen, No. 61 front, and to begin with Armour's man bid me $3.10 on the four cattle, and Sam Siegle who buys for Crescent came along and bid me $3.50 for two of them. He picked out the two lightest cattle and bid me $3.50 for them, and I sold him the two cattle for $3.50 covered by scale tickets 11 and 12. The two heavier cattle I sold to a yard trader at $3.25. I previously showed them to Armour and Company.

[fol. 1184] No. 13 is one roan bull I sold to Armour at $3.35. Harley Brown had bid me $3.30 on it. I offered to take $3.40 and I sent one of my boys out looking for a buyer, a bull man, and bulls had been lower all week, you couldn't hardly get a man into the alley, and finally I got Armour in there and sold him the bull for $3.35, which was a nickel more than Harley Brown had bid me.

No. 14 was one cow that I sold to Swift for $3.35. Armour bid me $3.25 for that cow. Wilson bid me three cents for the cow. I sold it to Swift's buyer for $3.35.

Ticket No. 8 is two weighty calves, which I sold to Empire Packing Company. I was bid $5.25 for these two calves by Swift, Armour and Morris; Weller and Shannon had

bid $5.25 in the morning, and fairly late, he bought them at $5.50.

Ticket No. 19 are the 13 calves which got in around a little before 12 o'clock. They were showing signs of grass. They are a hard set of calves to dispose of; I had Wilson's man on them and he bid $3.50 for two; $4.50 for two; and $5.50 for the balance; and I finally went to Swift's office and talked to Swift's buyer and he said, "I've got all the calves I want; I won't go out; don't ask me to; I won't buy any more today."

[fol. 1185] Then I went to Armour's office and finally got Armour's man to go down with me and I sold him the calves, two at $3.50 and two at $4.50 and the bunch of calves, nine of the best calves I sold seven of them at six cents a pound with two out at a nickel a pound. It was late and the city butchers were through and you couldn't get them down there after twelve o'clock.

Scale ticket No-. 22 and 23—I was bid $5.50 on those 21 calves by Armour and Company and I sent for Wilson three different times and he sent me word back that he would try to get over, he was not sure. Then, I got the Hygrade man and he bid me, he really didn't bid on the calves, he said he would want to buy that kind around a nickel a pound. Morris Weller offered to buy the calves if I would sort them heavy, but he wanted to leave the mean calves out. Jim Ellich with the Illinois Packing Company bid me six cents for ten of the calves with the balance out at four. I finally sold the calves to Swift and Company's man, 15 calves at $6.25 with six light calves out at $4.50.

Scale Ticket- 20 and 21—this is the two cows which Armour bid me $2.50 for one and $2.75 for the other one. They were all from Edgerton, Wisconsin, which is a very good country and all the buyers know it and they have very good luck with cows up there, low-priced cows. They [fol. 1186] don't have many condemnations on them from that part of the country. So I waited for Swift and he didn't show up until late. I sold him some cattle late, but I finally got Wilson and sold the two cows to him, the lightest one at $2.75 and the heaviest one at $3.15.

Scale ticket Nos. 24 and 25—that was three calves I had in the pen. Armour's man bid $3.00 for one, $5.00 for one and $6.50 for one. Sold them to Swift and Company, one at $4.00 and two at $6.00. There were only three calves

in that pen besides the bull. I showed them also to a couple of different buyers, but they wouldn't buy that little common calf, so I would not sell them the two better calves. They all belonged to the same man.

Scale ticket No-. 26 and 27 represent 65 heifers. Seigel and Weller's man bid me $5.50 on the 26 light cattle; I showed the cattle to Levy's man but he said they were too high in price for them, he didn't want any high priced cattle. I showed the cattle to Roy Wimp and asked him $6.15 and he wouldn't bid on them. They were to- high for him. I got Swift's buyer and he bid me $5.90 on them. Different ones came along and looked at the cattle, but didn't act as though they were interested and I finally sold them to Armour at six cents a pound.

Scale tickets 28 and 29 represent two calves. I had Swift's buyer on them and he bid me $3.00 for one and $5.00 for one and I had Hygrade's man and he bid me $2.50 for the small calf and $5.50 for the best calf. So I later got [fol. 1187] Swift back again and told him I was bid $5.50 for the best calf and he told me to weigh the two of them to him, one at $3.00 and one at $5.50. Morris Weller was not any good on them, he would buy the best calf, but he wouldn't bid on the common calf, and these common calves that you have just one odd common calf, you cannot give it away. You have got to make them buy the common one when they buy the good one.

The next one is one steer that I sold to J. B. Keller at $5.25. Henry Schroeder bid a nickel for it. Ralph Bender bid $5.10 and I finally sold it to Keller at $5.25.

The next scale ticket No. 31 covered three cows which Armour bid me $3.50 in the morning. I offered to take $3.65 and Wilson's man bid $3.40 on them. I went back to Armour to see if he would put on any and he said he had about all the cows he needed, he didn't care whether he got them or not. Later I got Swift and Swift did seem the best so I sold them to Swift for $3.50 but he weighed them to Hammon, which is owned by Swift and Company.

The next ticket covers two cows which Armour bid me $2.75 for. A speculator bid me $2.75; Wilson bid me $2.90 for them. I finally sold them to Swift at $3.10. That was a speculator bidding on a speculator's business.

The next one, scale ticket 34, is for one big white-faced cow. I sold to Swift and Company, he weighed him to

[fol. 1188] Hammond; I was bid $3.25 on this cow by Armour's man. The cow belonged to a speculator and $3.50 was all he wanted for her and was satisfied so I sold her to Swift.

The next one, one big cow, I sold to Swift at $3.25. Armour bid three cents on the cow, Wilson bid $2.75, and it was fairly late and I had Swift and I sold him the cow for $3.25.

Tickets 35 and 36, there were four cattle in that pen. Armour bid me $2.75 on them. There was not the class of cattle that Swift wanted, at least, he said he didn't care for them. He didn't bid on them. Wilson bid me, but finally Armour came back later on and bid me $2.85 on the four cattle and I sold them to Wilson, one cow at $3.25 and two cattle at $2.90.

The last one is number 37, which covers one red cow which Wilson bid me $2.85, and Armour bid me $2.75 for in the morning, and later on, I got Swift and he was not any good on the cow, said he would not buy her unless he could buy her under $2.75. I finally sold her to Armour's man later on at $2.90. I told him it took $2.90 to buy her; I was bid $2.85, but I thought I could get the other nickel and he finally bought her.

[fol. 1189] That represents the total sales made by me on July 20, with the exception of one cripple- calf. I carried over two bulls. So that I sold one calf and one bull at the first offer, and the balance I went along on. In handling this number of animals I used all of our sales pens. I used 44, 45 and 46 yesterday morning for watering and in keeping the troughs filled up there, and as we would sort, we would sort into a pen where there wasn't any water and drive the animals in there and let them drink and drive them wherever we wanted them.

If I were given the account sales and scale tickets for the same day in 1932, if it were a market day, I would not be able to describe in the same way, the manner in which I handled the animals on that day. The transactions of yesterday are still fresh in my mind. A man might think back a long while, over some particular trade he might have, but he cannot remember each instance where he has traded or who he had or what they bid him, at least I know I cannot.

There are never any two days alike that I have ever been able to find.

I am ready to sell cattle any time a buyer shows up in the morning, but I would not know exactly what the time was I started selling on July 20 because you are working and not paying any attention to the time. Oftentimes I see a clock in the morning and it may be five thirty or six o'clock [fol. 1190] and I won't think of looking at the clock again until in the evening or late afternoon; I never pay any attention to the time; it is just a question of getting the work done in the yards and then going to the office and talking to the shippers and writing letters.

Recross-examination:

I would say it was around one o'clock when I went in from the yards. I did not try to sell the two bulls after one o'clock because I was not able to find a buyer. Yesterday's market was a decent market, about steady.

Redirect examination:

Q. Mr. Shorter, if you were asked to estimate the number of cars of cattle that you could sell in a year, or the number of animals you could sell in a day, you would have to take into consideration the circumstances with the same detail that was required in the handling of the business as you have described it on July 20, in order for you to make even a rank guess at it, is that true?

A. Yes.

July 20th was just another market day for me; each day finds different problems in the matter of selling. It is true that the attitude of the buyers as I have described them as existing on July 20th, of this year, may have been entirely different on other days on other markets. As to how many carloads I have sold on July 20, or carload equiv- [fol. 1191] alents; I suppose between three and four, I imagine it could be three or it could be four. There were two loads of heifers, and then there are some calves and bulls and cows and an odd steer. You could get them all in one car probably, or there would be a little over another car, it would be between three and four cars. That is, taking the truck stuff.

Respondents' Exhibits Nos. 7, 8 and 9, Witness Shorter, being scale tickets, account sales and charts for sales July 20th, 1933.

MR. A. C. BAKER, a witness called by the Respondents, returned to the stand and testified as follows:

Cross-examination:

I haven't any idea as to the greatest number of cattle that I personally have sold any day this week. I never keep track of it. I cannot tell you the greatest number sold by our firm, as a whole, on any one day, this calendar year.

Mr. Miles: Mr. Boyd read to you from the record this morning that the National Commission Company received many more straight carloads than you did and that proportionately you received many more mixed carloads, and you advanced as a reason, if I understood you correctly, that your failure to sell as many as the National was due to their mode of arrival, was that the impression you wished to convey?

The Witness: I could not tell whether we could sell as many cattle as the National.

Mr. Miles (continuing): That is based upon the number of salesmen?

[fol. 1192] A. I don't know how many salesmen the National has.

Q. I say as many per salesman as the National?

A. I don't know.

MR. A. C. BAKER, JR., a witness called by the Respondents, returned to the stand and testified as follows:

Cross-examination:

Q. You testified in answer to Mr. Boyd's question that in your opinion you could sell a great deal more if your livestock or cattle came as they did come to the National, did you not?

A. No, I said I did not know. It all depended upon the conditions at the time I received them, and so on and so forth.

Q. The note that I have and wanted specifically to call your attention to it: did or did you not say that in your opinion you could sell a great deal more if the cattle came to you as they did to the National.

A. If I said that I misstated it, because my understand-

ing of what I said was that there was no way of telling whether I could or not.

Q. It may have been my own misunderstanding. Now, you have told us some things with reference to the difficulty of handling livestock based upon the idea that there is plural ownerships, is that correct? Or let me put the specific question this way: assume that you had twenty head of cattle of the same—two cars containing twenty head each of the same kind, grade and quality, would there be any difference in the amount of labor involved in selling one car of single ownership and the other car of several owners.

A. You cannot tell a thing about it unless you know the condition. It all depends upon the condition of the market and weather conditions and all other conditions involved in the sale.

[fol. 1193] Q. And if all other conditions were equal, except that one was owned by one owner and the other owned by several owners?

A. You cannot tell a thing about it. You can only draw the conclusion by setting up an imaginary system.

Redirect examination:

Q. Now, we find from an examination of the statistical data prepared by the Government and the analysis made of commissions charged by Baker, Heyne and Company, that you collected a larger amount of commissions in the case of plural ownership cattle than you collect for the handling of single ownership cattle, the commission in the case of plural ownerships was $6,576, and in the case of single ownership, the commissions were $5,033 on cattle and in the case of mixed No. 2, which includes mixtures of cattle, calves, hogs and sheep, under cattle,—no, the total commissions for that class of business is $5,489, so that the three classes of business varied as between all commissions from mixed No. 2 and the cattle in single ownership straight carloads $400 in favor of the mixed, and the plurals $6,576 or $1,576 in favor of the plural ownership as compared to single ownership. Now, there was in comparing the single ownership and the plural ownership in cattle, there was, as I say a difference of a little over $500 in commissions, while the drafts in the case of single ownership were one-quarter as many as in the case of plural ownerships. Now, to take some specific instances of the variations that oc-

curred in your business, we find that during the month of January you had one carload that contained 19 cattle, one owner, one account sale, and one draft, on which you charged $17.00 commission; you have one carload that contained 36 head with one owner, one account sale, requiring eight drafts; you had one carload containing 23 head, one owner, one account sale, with five drafts; you had one car containing 23 head, one owner, one account sale, with three drafts. You had one car containing 24 head, one owner, one account sale, with two drafts. It is apparent from the figures which I have given you that the business of Baker, Heyne with reference to the number of drafts necessary to sell a given number of animals vary according to the circumstances confronting you at the time.

A. Yes.

[fol. 1194] Q. Now, in comparing single ownership cattle for two different months during the year under investigation, 1932, take the month of April you had 13½ cars, 294 head, 12 owners, 12 account sales and 58 drafts. In the same year during the month of October you had 35 cars containing 921 cattle with 31 owners, 31 account sales and 10 drafts.

(Whereupon the question was read.)

Mr. Boyd: If the Examiner, please, we find upon a further examination of the records that there has been a mistake made in connection with that item, that in reality there were 110 drafts instead of 10, which raises that figure one hundred and raises the total for the year from 608 to 708 drafts in case of cattle, single ownership. (Continuing.) Now, in connection with that same comparison, Mr. Baker, during the month of November you had 48¾ cars, straight plurals, containing 1,432 head of cattle, 188 owners, 188 account sales, with 537 drafts; the work incident to the handling of your transactions varies according to the necessities of each case as indicated by the differences in the receipts as reflected by the figures which I have read to you?

A. Yes.

Q. During the month of October you sold 145 truck cattle, 62 owners, 62 account sales, with 112 drafts. During the month of May you handled 233 head of trucked cattle, 80 owners, 80 account sales and 142 drafts, so that does it not

follow that the nature of the receipts coupled with the conditions under which you handle them cause you to make different classifications and different sales and require a different number of sales to handle the same number of animals?

A. Yes, sir.

Q. Are you able to estimate in advance what those differences in time, the sorting that will be required, or any of the other incidents of a transaction in advance of the moment that you are required to perform the service?

A. We are not, we are unable to.

[fol. 1195] Q. In order to determine the number of carloads of business that you could handle, as a salesman, of the kind of business that you, yourself, handle, and did handle during the year of 1932, would it not be necessary to have a great deal more detail in order to make a guess, even a rank guess, of the amount of work you might do than to have the small amount of detail that I have given you?

A. Yes, it would.

Recross-examination:

When I am on the road soliciting I recommend our own firm to the farmer and the Chicago market. I intimate to them that we can do as well as any of them. We sell the cattle that come to us day by day except a few days that we carry them over. We don't always sell them that way, sometimes it takes us three or four days. We put forth every effort to sell them when they arrive, and if we do not we have to hold them over.

Mr. E. A. Brotzman, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 4357 Greenwood Avenue, am president and one of the stockholders of Miller White and Woods. I am also a cattle salesman and sell butcher stuff. Our business comes from Illinois, Iowa, Wisconsin, and some from the Dakotas and quite a lot from Indiana. I have been with my present firm twenty years.

Previous to that I sold for Evans, Snyder, Buel, butcher stuff. We have only five men selling cattle at the present [fol. 1196] time; Graber and Husted sell steers. Work and myself sell cows and I also sell the calves, Hayes sells bulls; if we are short-handed and a man is away, Hayes helps on the cows or calves. I have general supervision over all the departments.

I solicit and all the other salesmen also make trips and solicit both cattle and hogs. We decide amongst ourselves what territory to solicit, if a man has some friends out in Iowa that have asked him to come out there, we say, "Go ahead and see them." On trips to see cattle we also try to get new business. For the year, I presume I will spend thirty-five to forty days. I personally solicit mostly in Wisconsin and Northern Illinois. I made my last trip in June to Northern Illinois. I went by rail; I did most of my traveling by automobile after I got there. I was only two days on the trip. I went because I was requested to look at cattle. I never counted them up, but I suppose I called on seven or eight farmers in the neighborhood there.

I have done everything possible to hold our expenses down. That applies to the trips I have made. I do not think we did more soliciting than was justified by the circumstances. I do not think there was any money spent [fol. 1197] that should not have been spent for that purpose. We made a reduction in salaries to take effect the first of July. That was done so we could live within our income. The expenses were greater than the income.

Q. The business of your company which arrived by truck in cattle amounted to 10,884 head, and you had 6,832 drafts, 3,757 owners; so that you had nearly twice as many drafts as owners arriving by truck, and you had less than two head per draft on the average, 7/10?

A. Yes.

Q. Do you believe that it could have been possible to have sold those cattle in a fewer number of drafts?

A. Not and satisfy the shippers.

Q. Well, tell the Examiner how you sell, go about selling this kind of a carload. One car, the first subdivision contained eight cattle, five owners, five account sales and eight drafts; the second seven head, sold in one draft, three head sold in one draft, two head sold in one draft; a total of twenty head with eleven drafts all together.

A. As I understand you, those different bunches are sold at different prices, are they not?

Q. I don't know, the price is not here, sir.

A. Well, the probabilities are that was a co-operative load of possibly——

Q. You charged $20.07 commission.

A. On twenty head?

Q. Yes.

A. The probabilities are that that load of cattle was sorted into three or four lots, that is three or four different [fol. 1198] pens. The cows was worth, say three cents a pound and graded at that price would be yarded by themselves. They might have been canners and might have been in another pen, possibly some heifers; they would all be yarded separately, the heifers would be yarded separately from the cows, Good cows would be yarded separately from the thin ones. Then, you would have to go and get buyers for that class of cattle.

Q. You might have several buyers for each class?

A. For each pen, you mean?

Q. For each class of cattle, and for each pen.

A. Well, we might show them to several buyers; we might not sell them to the first man on them if we had a bid on them.

Q. You might have to show these cattle to any number of buyers before you could get them sold?

A. Yes, because in that twenty head, that is sold in several lots, no doubt are sold to different buyers, because a man that wants fat cows won't buy stock cows or bulls, so you have to get different buyers.

Q. What would be the difference in selling that kind of a consignment and a consignment that consisted of two cars, where a man had twenty-three head from one owner, you had five head from one owner in one draft, and you had six head in the next draft, two in the next, nine in the next, one in the next, six in the next, two in the next, three in the next, one in the next draft, one in the next draft, four in the next and one in the next.

A. Well, judging from the number of drafts in your two-car shipment, there was probably just as much work selling that as there was in the shipment of twenty head.

Q. That is a two-car consignment, containing 62 head, there were thirteen drafts and each draft contained the number of head that I have previously stated.

A. How many drafts were there in your shipments of twenty head?

Q. Eleven.

A. Well, no doubt, it was as much work for the man selling those twenty head as there was in the two-car shipment, [fol. 1199] because he has got to sell those in different lots.

Q. And you had another carload that had twenty-nine head, two of them were sold in two drafts, fourteen in one draft, five in one draft, one in one draft, four in two drafts, and three in one draft; you haven't any idea what that consignment was, or what the contents of the car was, except that you know that there were certain head and certain drafts? Are you able, in any way, to make any comparison as to the length of time it actually took to sell that compared with any other load?

A. The time consumed in selling that car of stock with that many drafts would be much greater than a straight load of cattle.

Q. Now, is it not possible that a part of the animals sold readily that another part you had difficulty in finding buyers, who would give a price suitable to you?

A. Yes, sir, that is often the case.

Q. One may have been sold on one kind of a market and another sold on another?

A. Possibly a big bunch sold early in the morning and we had some tail ends that we would work on until late in the afternoon to get rid of them.

Q. During the entire month of November, which was your largest cattle month, I believe you had a total of six carloads of straight cattle and one six, that sold in one draft?

A. Only six?

Q. Only six cars out of your total month's business that you sold a carload at a time, necessitating one sale and one draft. Do you find that your business generally is of the type that I have described to you here-fore?

A. The bulk of it is of that type.

[fol. 1200] Q. It is noticeable that your cattle business varies from month to month, that your heavy hog months may be and are in most instances small cattle months; how do you account for that?

A. I could not exactly account for it.

Q. Is that one of the pecularities of your business which you cannot overcome?

A. Yes, sir, we cannot control shipments.

All of my cattle salesmen were fairly busy on most of the market days in 1932 selling cattle if it was a draggy market—on a good market we could get them sold out early, on a draggy market we would be working on them all day. We don't know one day in advance whether we are going to have a draggy market or what kind of a market.

I do not feel that the number of salesmen that were used for the sale of cattle that were received by us was more than was necessary. I believe on most market days the salesmen were using their full time during market hours to properly dispose of the business that they had to sell. I was so engaged. There are days when they are standing around waiting for the buyers to come, they are waiting, they are not busy, they are not selling during that time, I would say they are busy until they are sold out.

I believe that the business we had to do justified the employment of the number of salesmen that we used during 1932, otherwise we would not have kept them. I be- [fol. 1201] lieve that is also true of the salesmen we now employ. The difficulties of operating a commission business are getting more difficult.

Cross-examination:

The Exchange limits the number of days soliciting spent in the country to sixty-three. I think that limitation has been a benefit to the commission men to keep them from going out too much and also requires them to stay here and tend to their business. I don't know whether a further limitation on the number of days I could spend in the country would be a benefit or not if it were applied on all the firms. I have never gone out over forty-five days in one year, myself, I believe. I have limited myself to forty-five days because I have so many other interests here in connection with the firm. I testified on direct examination that I spent no more, meaning thereby, my firm spent no more on solicitation than in my judgment should be *been* spent. We base that on the prospect of getting business and satisfying our customers. If the man asks us to go out, we pretty nearly have to go to see them. Sometimes they are offended if we don't. I don't know whether we respond to all the requests made by prospective shippers to go out in the country and see them. We get a good many requests during the year and we might turn somebody

[fol. 1202] down. I would not make a trip personally to see six cattle, if it was any distance. If I were going in that neighborhood within five or ten miles of it, then I would go and see them, but I would not drive out fifty, sixty or one hundred miles to see six cattle. There are a great many cases where we get one or more shipments from a shipper where we go out which we would not have gotten otherwise; I could not enumerate them. I just couldn't give you any idea. I cannot tell you the expense of a single trip, and the number of shipments that I got as a result of that trip that would not otherwise have gotten.

Husted, one of my cattle salesman was a member of another firm. The firm dissolved and I hired him to sell steers. This man sold all the steers that were received. As to whether I expect him to sell all we received in order to pay him that salary, he did, that year. Taking the salary of employee No. 2, the man that drew that salary has a lot to do besides selling cattle. It represents my salary. It is a pretty hard question for me to answer how many head or carlots I would expect him to sell to keep him on the payroll at that salary. If he had a good big following and would bring us six or seven thousand dollars a year he would be a cheap man. My same answer will apply to persons Nos. 6 and 7 on the blue audit. Assuming that they had no business following and were simply used as salesmen, I would not employ them at all. I could not [fol. 1203] afford to hire any salesman unless they had a business following. If all of our salesmen are present on a particular day, Mr. Graver would sell yearling heifers and steers, because the steer men buy those. If you got a load of prime yearling heifers, we would put them in the steer alley. Mr. Husted sells steers. If all the salesmen were present he would not sell anything except steers. Mr. Work sells cows and heifers, and he sells that kind when all are present. That is what we hired him for, to sell butcher stock. If we might have an odd steer down there that was not worth sending to the steer alley, he might sell them or I might. Mr. Work is there to sell the cow stuff. Mr. Work does not sell all the cow stuff. I also sell cow stuff.

I would expect a steer salesman to sell all the steers we receive and the same would be true of the three remaining salesmen. They should sell all that was left, that would

be the cow stuff. Our firm usually receives the heaviest shipments in the fall. We get a lot of cars of cows from Wisconsin and Minnesota in the fall, we get a few westerns and we get fat cattle. As a usual thing our westerns come in one ownership cars but sometimes there are two or more. Where they come in single carlot one owner the amount of sorting required depends upon the kind of stock, [fol. 1204] if they are all steers, as a general thing, there is not much sorting, but should they be mixed sorts, cows, heifers, bulls and some calves, it is a lot of sorting.

On the assumption that they were all steers, single owners, I don't think it more difficult to sell a carlot today than it was ten years ago. The greater difficulty in selling cattle today as compared with the past is due to the fact that there are more owners represented in a single carlot. We have a great many cars of plural ownership. On big days, we work until late in the afternoon. We nearly always eventually sell, day in and day out, all that our firm receives, we aim to clean up if we can get the market for them. We sell all that we receive now and we formerly sold all that we received, speaking generally.

Q. Surely. You have been in the commission business for a great number of years, is it not true that from the time you came here to the present time, the commission men were constantly saying that business conditions are getting worse each and every year?

A. I don't think so.

Q. Do you recall the arbitration award of 1923?

A. Recall what?

Q. The arbitration committee that came out here to investigate the rates in 1923?

A. Yes, sir.

Q. Do you recall in 1923 whether it was not the complaint of commission men that business conditions had changed, that conditions were much more difficult then than in former years?

[fol. 1205] Mr. Boyd: I object to that question, Mr. Examiner. There is a typewritten record of every word that was spoken in that case and I submit that is the best evidence.

Mr. Miles: Oh, I didn't ask——

Mr. Boyd: And one of the arbitrators is present; if you

want to put him on the stand, he can testify to that accurately.

Mr. Miles: I appreciate your information.

(Whereupon the question was read.)

The Examiner: The question is: do you know,—and we will pass on one question at a time,—answer whether you know or not.

The Witness: What is the question?

(Whereupon the question was re-read.)

The Witness: I do not know what other commission men were doing at that time but I know my business was much more difficult and I would like to tell you why.

Mr. Miles (continuing): You may have that opportunity in just a moment. Were your business conditions more difficult in 1923 than in previous years?

A. They were more difficult than they were ten years previous to that time.

Q. And, now, you have testified, in answer to Mr. Boyd's question, that they are more difficult now than they were ten years ago?

A. Yes, sir.

Q. Now, you have volunteered the statement that you would like to tell us why they are more difficult. You have that opportunity now.

A. Ten years ago than twenty-five years ago is going back a long ways.

Q. I am willing to take up the time in the record. I thought that your statement was that you would like to [fol. 1206] tell now why they are more difficult now than they were ten years ago.

A. I want to go back further than that, if I may. You said that the record at the investigation had in 1923, the commission men said that business conditions were more difficult then than at the present time?

Mr. Miles: How long will it take you?

A. I don't think it will take five minutes.

Mr. Miles: All right.

A. About twenty years ago, or perhaps a little more, the country had a wave of co-operative shipping. They or-

ganized co-operative shipping associations all through the country, put ten or twenty, and sometimes thirty or forty owners, in one car, and they had to be sorted up here and prorated, bills prorated, and made a lot of work. By that time, we had buyers in each town that bought all the local stock and put in one car, shipped it in one man's name, one bill, one check is all that is necessary. Today we have to send twenty-five or thirty checks. That is, for the co-operative shipments. Later, truck drivers came in and they took over a lot of business that formerly came for cooperatives, and there is more work to a shipment now than there was to shipping associations, because we have no home weights, everything has to be weighed separately, each farmer gets a check where formerly the manager of the association got a check and he checks out to various farmers. That is why it is more work now.

Of my two steer salesman Mr. Graber sells the greatest number. I cannot tell you the exact proportions. It is safe to say two-thirds of it.

Redirect examination:

As to how I know that Mr. Graber sells two-thirds of our steers; that is a guess. I would estimate that he sells [fol. 1207] two-thirds of them. I know that Mr. Graber sells the bulk of the steers because he is the head steer man and the other man just came with us the first of January. I mean Mr. Husted.

Recross-examination:

Q. In your opinion, what may a cattle salesman be reasonably expected to sell, based on per day or on the month, assuming now that he had all that he could handle.

The Witness: It is pretty hard to form an opinion, Mr. Examiner. Market conditions some days, one could sell cattle much faster and easier than he could sell on others. I would not want to say how many cattle a man could sell in a day because so many things enter into the trading.

Our firm sells all the livestock that comes to us from day to day over the course of a year. We aim to sell all we can, sometimes we have to hold some over.

Q. Assume a steer salesman had five straight carloads of steers each and every market day throughout the year, in your judgment could he sell that number without any other salesman assisting him?

A. Five carloads?

Q. Yes, sir.

A. On a good market he could sell five loads. On a bad market, I have seen times when a man did not get any sold.

Mr. Miles (continuing): But at the end of the year, do you believe that he could have sold an average of five carloads per day each and every market day, recognizing that some days you have a fast market and some days you have a slow market?

[fol. 1208] A. Well, gentlemen, I believe I told you when I first came in here that I sell cow stuff, and I don't like to say what a steer man could do.

Mr. Miles (continuing): You are responsible for the employment of steer salesmen, are you not?

A. Yes, sir.

Q. You have told us that you took on one man as a steer salesman, based at least in part upon his business-getting ability, that is, he drew trade?

A. Yes, sir.

Q. Now, assume that that salesman draws five carloads of steers per day for each and every market day. In your opinion, would he not sell those five carlots of steers, taking it over the course of one year?

A. Well, sir, he could, if the market was right.

Q. Well, you would have days when it is right, and days when it is not?

A. Yes.

Q. I want you to consider the year as a whole.

A. I have seen the days when one man has sold a good many more than five carloads, and I have seen days when he could not get action. What he would do in a year, I would not like to state that.

Mr. Miles: (continuing): You say that you have seen days when in your opinion he could sell a great many more than five carloads.

A. I have seen a man sell a great many more than five carloads in a day.

Q. How recently?

A. This summer.

Q. Do you know how many carloads that man did sell on that particular day?

[fol. 1209] A. No, not the exact number.

Q. Could you approximate it, about how many?

A. Ten.

Q. Yes, sir, and how many days, in your judgment have there been in the past year when a man could not sell any cattle?

A. Well, he could probably have sold his cattle if he wanted to take the buyers' bid, if he was bidding, but if he was trying to get what he thought was the market, there have been days when he didn't sell.

Q. As a matter of fact, is the salesman compelled eventually to take the buyer's bid, even though he feels that he has not got a fair value?

A. If he thought he has not got a fair value, he may work them out the second day and possibly the third day.

Q. But, eventually, he must take the buyer's bid, if they are sold?

A. He don't have to take the buyer's bid today, tomorrow he may get an order buyer or the packer might be bidding today.

Q. But, somewhere, somehow and sometime he must take the buyer's bid, if he sells the cattle?

A. Sooner or later, he has got to sell them.

Q. Now, you have told us, if I understand you correctly, that you sell only the cows?

A. I sell cows and calves.

Cows and calves very often come in one car. We had some Monday this week. I didn't get the count of this load. There were some steers in it and some cows, and I [fol. 1210] think nine calves. I don't remember how many cows or how many steers, some steers were cut out and sent to the steer alley, and I didn't sell the steers.

Q. In your opinion, based upon your experience, how many carlots of cows and calves could you sell in a day, taking them just as they come to you, with the mixtures just as they come mixed?

Mr. O'Bryan: Objection——

Mr. Boyd: Wait a minute. I want to raise the objection

Mr. Examiner, that first I would like to ask this witness a question as to his knowledge of how they came to him to indicate whether or not he is qualified to answer that question. Do I have the permission of the Examiner to ask that question?

Mr. Miles: Perfectly all right.

The Examiner: Yes, sir.

Mr. Boyd: Do you know, Mr. Brotzman, how the cattle and calves that were mixed actually arrived during the course of 1932, what those mixtures were, the separations that were necessary, either with the cattle or with the calves, in order to effect a sale?

The Witness: No.

Mr. Boyd: I submit the witness is not qualified to answer.

Mr. Miles: Let me proceed with this. (Continuing.) On this particular Monday, you received a carlot, you say there were some steers, some cows and some calves, is that correct?

A. Yes, sir.

Q. Did you tell us how many calves there were?

A. I believe there were nine.

Q. How many cows?

A. I don't know; the steers were cut off and I didn't have the counts.

[fol. 1211] Q. Do you know how many steers there were?

A. No sir.

Q. Now, taking similar carloads throughout the course of a year, how many carlots arriving just as that carlot arrived, in your opinion, could you sell?

A. I couldn't answer that.

I think we render as good service as any other market agency on the yards. As to whether I am as good a salesman as any other salesman handling like stuff, I have never been asked to take a back seat for anybody. As to whether I mean by that that I am as good, I think I am a good salesman. And I think I am as good as the other salesmen on the yards. With reference to the other salesmen employed by our firm, the cattle salesmen, I think they average, in ability, as high as other salesmen employed by other commission men.

Q. Do you believe that they could sell as many head or carlots of cattle as any other salesman on the yards of like kind and quality, and arriving in the same manner?

The Witness: The other firm having the same grade of cattle with them, of course, there is no two firms handle exactly the same cattle at the same time, but giving, you might say, an even break, with the same grade of cattle I feel our men could sell as many as the other commission firms.

Mr. Miles (continuing): In your opinion, could your firm have handled more cattle during the year 1932, if you had had larger volume of receipts?

A. Could we have handled more cattle?

Q. Yes, sold more cattle.

A. Yes.

[fol. 1212] Redirect examination:

If I received a carload of cattle tomorrow, containing twelve canner cows, two cutter cows, two cows in between a canner cow and a cutter, nine thin heifers, one veal calf and four bulls, I cannot tell how long it would take to sell it on tomorrow's market. I cannot remember what kind of a market we had on June 16th, and if I could remember what kind of a market I had on June 16th, I could not tell you how long it would have taken to have sold that load because I may have to wait a half hour to get a buyer and the buyer could come in and buy all these on the first bid in a few minutes, and I might be peddling around there two hours; you cannot tell anything about it.

Q. Then, if you cannot tell me how long it will take you tomorrow and you cannot tell me how long it will take you to handle them on June 16th of last year, how can you be expected to tell the number of carloads that a salesman could reasonably be expected to handle, that being simply one carload of many varying kinds that were handled throughout the year?

A. I believe I told the Examiner I could not tell you that, what they could sell in a year.

Q. Then, why cannot you tell him?

A. On account of the market conditions and the class of cattle, all loads don't sort like this; some sort in more drafts than the other.

[fol. 1213] Q. Do you remember what the market conditions were last year from day to day?

A. No.

Q. Is it possible for you to carry them in your head?

A. Never try to.

Q. Is your memory as good as most salesmen?

A. I think so.

Q. Do you think any salesman could take the witness stand and indicate the difficulties confronting him during the past year.

A. I don't believe he could.

Q. Have you ever seen one that you thought they could?

A. No, I would like to meet one that had a brain that good.

Q. Is it not possible that different kinds of cattle meet with a different demand from day to day and from hour to hour?

A. It is possible, yes, sir.

Q. Is it not true that, or is it true that the number of truck cattle that you can sell, in comparison with the number of cattle arriving by rail, varies from time to time, according to the conditions which you meet in the transactions at the moment you attempt to sell?

A. That is true.

Q. You go out in the morning, thinking you will be able to sell what you received, but you find that even on that day, three hours in advance of the close of the market, you find that the situation is so changed that you would think it was an entirely different day?

A. It changes very rapidly some days.

Q. During the course of one day's trading?

A. Yes, sir.

[fol. 1214] Q. Do you think any man can remember or can be expected to remember those constant changes that take place on this market from hour to hour and day to day so that he may consider and weigh those conditions, in answering a question of the kind that Mr. Miles has asked you?

—. I do not think so; it would be too much for one man to remember.

Q. Then, you think that question is not susceptible of an answer?

A. That was the question of how much cattle a man could sell in a year?

Q. Yes.

A. I would not attempt to answer it.

Q. The work sheets of your firm contain several hundred

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sheets of various kinds of business that you handle, ranging from a few drafts as in the month of November, where you handled five cars only out of an entire month's business, which were sold in one lot, that is, sold individually——

A. Yes, sir.

Q. —up to cars that required the selling of each individual animal separately. Do you think it possible for you to begin to carry those conditions in your head, those mixtures and circumstances in your head, so that you could properly weigh and average out the hundred thousand cases probably that are contained in this record?

A. On last November?

Q. Yes.

A. No, sir, I couldn't do it.

Q. No, I mean for the year or for the month.

A. For the month either, or the year, it couldn't be done.

[fol. 1215] Q. Can you recall now on the witness stand as many as seven, the condition of as many as seven market days during the year 1932 and state the dates?

A. No.

Q. And describe the conditions?

A. No.

Q. Can you describe any single day concerning conditions, the exact conditions which confronted you on that day.

A. In 1932?

Q. Yes, and give the date.

A. No.

Q. If you cannot do it for one day, how could you be expected to do it for a year.

A. I do not see how anybody would expect to do it for a year; I could not.

Recross-examination:

Mr. Boyd on direct examination called my attention to twelve canner cows, two cutter cows, two cows in between and nine thin heifers. Let us take the twelve canner cows. The market yesterday for canner cows was $1.75 to $2.25. It was a rather slow market. We had canners yesterday to sell. I think Mr. Work sold all our canners yesterday. I do not know what time was required to sell them because Mr. Work sold all the canners yesterday; I had a gentleman here from the country and I was taking him around the

[fol. 1216] yards. They were sold before the day was over. Mr. Work also had heifers for sale yesterday. The next lot was two cutters. The market on cutters yesterday was just about like canners, a slow market. We had quite a few cutters for sale yesterday. I do not know how many. They were all sold in the forenoon. The next grade was nine thin heifers. The market yesterday on heifers was about steady. The next one mentioned was one veal calf. The market on veal calves yesterday was twenty-five to fifty lower with a fair demand. The next on the list was four bulls. The bull market yesterday was strong. We had probably ten or twelve bulls for sale. Mr. Hughes sold them. I do not know at what time they were sold. I think they were all sold in the forenoon excepting one.

Assuming that such a carlot as described to you that came in yesterday, a carload like that; there were two men selling those cattle, I suppose, Mr. Work—this is just a guess, I do not know how long it would take to sell those cows. I do not know how long he actually required in selling the cows he sold. Based upon my experience on yesterday's market, the two men selling the cattle, working on that class of cattle to sell them, based on my memory, I would not know how to answer that question, because, if Mr. Work had to go out and look for a buyer and maybe spend a half an hour [fol. 1217] looking for a buyer, that half hour is lost, and he brings the buyer down there, and he may not be buying cutters, and he has to go and look for another buyer and how much time it would require I do not know. They would be sold in one day, and I would expect those same salesmen to sell other additional cattle during that same day.

Q. And, if a farmer were to say to you that he had ten loads, each of the ten being the same described by Mr. Boyd, that he wanted to ship to you, and asked if, in your opinion, whether they could be sold on the next day's arrival, would you not tell him that, in your judgment, you thought your firm could handle these ten cars.

A. If they got in in the morning.

Redirect examination:

Q. Mr. Brotzman, during the month of January, 1932, the work sheets show that you had all told during that month, 16 cars of cattle in straight cars, single ownership, the first car contained 26 head, there was one owner and

one account sale and seven drafts; and the rest of the information I will give you in each case, there was one owner and one account sale. On the next car there were 21 head with three drafts, the next car was 36 head with four drafts, the next 41, two drafts, there were two cars; there were two cars containing 52 head with six drafts; there was one car containing 22 head with four drafts, one car containing 22 head with four drafts, there was one car containing 33 head with four drafts, there was one car containing 22 head with four drafts, one car containing 21 head with 16 drafts, one car containing 22 head with one draft, one car containing 23 head with four drafts, one car containing 38 head with eight drafts, one car containing 24 head with one draft. Do you know whether or not you sold any of those cattle?

A. They were steers, were they?

Q. I don't know, and there is no information available from which that question may be answered.

[fol. 1218] A. I cannot tell you today what we did last January, that is, which ones I sold, without looking up the records. If I could see the scale tickets, I could tell you.

Q. If you could see the scale tickets, you could tell which of the animals you may have sold?

A. Yes.

Q. And you have a straight carload in this case, twenty-one head, sixteen drafts, you had a straight carload, single ownership, and, in the case of twenty-four head, the last that I read you, you sold or someone sold in one draft?

A. Probably that was steers.

Q. Or that could have been anything else?

A. It might have been a straight load of cows or heifers, too.

Q. It could have been both, could it not?

A. It could have, but it is not likely.

Q. Now, in order for you to take into consideration the business which your firm did, would it not be necessary for you to take into consideration the sixteen carloads that you handled in January?

A. It would be necessary to take into consideration?

Q. If you were asked by counsel for the Government to take into consideration the conditions as you found them, they are some of the conditions that existed, are they not?

A. Yes, sir, those are actual conditions.

Q. And do you not recall any of the market days on any day in January?

A. No, sir.

Q. That would be a condition that you would have to estimate, you would have to know also, would you not, that during the same month you had straight cars in plural own-
[fol. 1219] erships that contained one single deck with fourteen head and two drafts, twelve head with three drafts, that you had another car that had thirty-four head, sold in two drafts, four head that sold in four drafts, that you had one carload containing twenty-two head with eleven owners, that you sold in fifteen drafts; that you had two cars containing forty-three head, forty-one of which were sold in twelve drafts, one was sold in one draft, that you had another car with twenty-eight head, twenty-one owners, ten drafts, and last car was thirty-five head, four owners, four account sales, and seven drafts; in addition to the information that I have just given you, you would have to have that information and be able to correlate that information?

A. I would have to see the scale tickets of those dates.

Q. As a matter of fact, don't you think you would have to see the cattle?

A. You could not see the cattle now?

Q. True.

A. You mean to corroborate those sales?

Q. No, on any future business that you would get which were composed of the animals as I have read them to you, the last animals, that in order to tell anything about them, you would have to see them, in the first place.

A. Yes.

Q. And anything you might say about those animals would be pure guesswork, until you could see them?

A. Yes, sir.

Q. And, until you could see them, it would be guesswork as to how long it is going to take to sell them?

A. You never can tell until they are sold how long it is going to take.

[fol. 1220] Q. And that the information in connection with Mixed No. 2, selling has still a greater variation as to the number of drafts which animals were divided into than the two previous classes, that there were 298 head, all told, that you had 119 drafts, varying with each shipment, and that on the same market days you would be compelled and

did sell cattle and calves that came in mixed shipments and varying mixtures, requiring, in the case of two hundred and ten cattle, ninety-five drafts, almost two animals to the draft, and that in the case of calves, there were 149 head during that month with eighty-six drafts; in order for you to estimate a carload of cattle, you had to take into consideration those facts and those figures, in addition to those previously given you, would you not?

A. Yes, sir.

Q. And, at the time that was going on, you would have truck animals that would come to your pens along with the kinds and classes of animals that I have described to you, would you not?

A. Yes, sir.

Q. In which, in handling ninety-nine head, you are required to make sixty-two sales—no, that is the total of the first column, ninety-nine head and sixty-two sales; the second column covering calves is fifty-nine head with thirty-nine sales, you would have to take into consideration those facts in addition to those previously stated?

A. Yes, sir.

Q. And you would have to weigh and balance out those conditions and those circumstances in addition to those already given to you?

A. Yes, sir.

Q. In order to not encumber the record, I will give you no more instances, and that, for each month of the year, you would have to consider in addition to those facts that I have given you for January, all of the other conditions [fol. 1221] that occurred throughout all the other eleven months, would you not?

A. Will you state that question again?

The Examiner: Read it to him.

(Whereupon the question was read.)

The Witness: Yes, sir.

Mr. Boyd (continuing): So that you would have a problem that would involve thousands of factors?

A. Thousands of sales to remember, anyway.

Q. And thousands of factors to be considered?

A. Yes, sir.

Q. And, before you could answer a question of that kind, that was put by Mr. Miles, you would have to come to some

kind of an average of all these varying conditions before you could begin to give a fair answer?

A. Yes, sir.

Q. And, in addition to that, you would be required and compelled to know the market conditions which confronted the salesmen when these sales were made, if you were going to say, "Based upon the experience of the past year?"

A. You would have to have a lot of that.

Q. Sir?

A. You would have to have all that averaged up, wouldn't you?

Q. What do you think?

A. I could not base any—I could not give any intelligent answer on that.

Q. Do you think you would have to average it up before you could give an answer?

A. I don't think I could give an answer on it, then.

[fol. 1222] Recross-examination:

Some of my employees are on a weekly basis and some on a monthly, three or four men by the year. The yardmen are hired on a weekly basis. Usually the salesmen are hired on an annual basis. Based on the last month, if business was good, and I needed another yardsman, have to have him, I would hire him. Yes, it would be based upon my past experience.

Mr. Edward J. Lawler, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 5552 Everett Avenue. Lawler Brothers was a partnership but I am the sole owner now. My brother died. Formerly we had a corporation with Van Norman, Lawler & Company, which was started twenty-seven years ago. After about the last fourteen years, after Van Norman retired, we bought them out, we operated it as a partnership, I think it was approximately fourteen years. I sell cattle and calves and generally manage the concern; employ all the help, make all contracts of employment. We have twenty-three employees. We have twenty-one and

then we have a man at the scales in the hog alleys and then we have a man at the chutes that checks the stock off; they are on our payroll. The twenty-one are fully employed.

[fol. 1223] When I was a boy about fifteen or sixteen years, I worked during the vacation months as an office boy for Clay Robinson and Company, used to carry tickets from the alley when the stock was weighed to the office and so forth. I then went to work for my brother for Evans Snyder Buell. That was continuously then, and after two years, yarded cattle and calves. In the meantime, selling a few here and there, and for probably two or three years sold butcher stock under him. Then worked for Charles Harding, selling stockers and feeders and calves for approximately four or five years. My brother, about this time, went in partnership with G. B. Van Norman, who had been in the business since 1874. There I sold calves and fat steers, the latter along with G. B. Van Norman. After that, we bought Mr. Van Norman out and have continued doing the same since. Selling steers mostly and supervising the calf sales along with other ends of the cattle, other cattle. Most of our steer business comes from Indiana, Illinois, Iowa and Nebraska. Most of our calf business comes from Wisconsin and Illinois. We have one of the largest calf business- at the stockyards. We had four steer salesmen besides myself in 1932, and at the present time we still have four. We have one selling butcher stock. I classify butcher stock as cows and heifers. John Mahoney sells the bulls, and the calves are sold by O'Meara and me. [fol. 1224] Mahoney helps along with the butcher stock, and also helps O'Meara in case we are short-handed. Jennings sells our hogs. He has no assistance in selling. Jesse Davis sells our sheep. I supervise the selling of steers. After the cattle are yarded we aim to go through them together and set a price on them. All cattle, even the odd ones, we go through them too, and then we have a general idea of what we want for those cattle, how the markets will be and what we think of them. Then, any one of the salesmen will take any buyer that comes along through any bunch or odd bunch of these cattle, I aim myself to show them as much as possible, but if I should be in another alley, and a salesman came along in this other alley, any one of the others would bring them through the cattle.

In the sale of steers, the other salesman and I worked along side by side all day long, and in the case of calves Mr. O'Meara and I handle them. Lawler Brothers probably receives for sale on commission probably every class of cattle known.

A very small percentage of the various grades and kinds of cattle that come in arrive sorted. Loaded together with all kinds and classes. The first work we do in getting livestock is to sort it. Then feed and water it. It is a common expression in our alley, we get lots of cattle from [fol. 1225] Northern Wisconsin and Minnesota—they say if anybody can sort those, they can make a watch. We have so many kinds of different calves, bulls, stock heifers, stock steers in one bunch.

Q. The work sheets covering your concern for the year 1932 cover an analysis of the business done by you showing the number of head, the owners and the drafts, and the various consignments received by you. The work sheets as you will observe are very extensive, however, I will call your attention to some of the different consignments; during the month of January, 1932, there were two cars containing 35 head of cattle, single ownership, by rail, that had one account sale and one draft; there was one car containing 30 head that had one account sale with eleven drafts; there were two cars containing 51 head that had one account sale and 16 drafts; there were two cars containing 52 head that had one account sale and one draft; there was one car containing 24 head with one account sale and ten drafts; one car containing 20 head, one account sale and one draft; one car containing 36 head with one account sale and two drafts; and one car containing 36 head, one account sale with 14 drafts. Now, in the case of mixed No. 2, single ownership, that means a car that contains cattle, calves, hogs or sheep, or any of those species except cattle and calves, which is considered as mixed No. 1—in the case of mixed No. 2 you have one single deck car that had six head of cattle, five drafts; you had ten head of calves with seven drafts; 49 head of hogs with 13 drafts; another car, a double deck car, containing 155 hogs, three drafts, 19 head of hogs in one draft; then you had another single deck containing eight head with four drafts; 29 head of calves with two drafts; eight head of hogs with one draft; ten head of sheep with two drafts.

During the month of January, you had by truck a consignment of forty head of cattle sold in two drafts, you had eleven head of cattle sold in five drafts, you had nine head of cattle which sold in four drafts, 34 head of cattle that sold in three drafts, six head of cattle that sold in four drafts, and a great many of one head that sold separately, one consignment, one draft, you have many that were two head that were in two drafts, there were many of four head that were in three drafts, and so on, and the same situation prevailed in each of the months of the year, not in precisely those numbers or those amounts, but the mixtures and the drafts varied from shipment to shipment, from day to day, and from month to month. Are you able to say why that sorting in those cases was necessary, without information——

[fol. 1226] A. Is this plural ownership or single ownership?

Q. Single ownership.

A. Well, it was necessary to sell them that way to the best advantage.

Q. But you don't know from that information whether those animals were steers or cows?

A. It would apply just the same.

Q. So you don't know whether you or any of the other salesmen sold them?

A. I would not know.

Q. Can you now recall the condition of the cattle market of the kinds and grades that you sold on the various market days of 1932?

A. The kinds?

Q. Read the question.

(Whereupon the question was read.)

Q. (Continuing.) For each of the days of that year?

A. No, that would not be possible.

Q. Can you recall the market conditions of the various grades of animals, I mean from memory, the condition of the market on any day of 1932 covering the various grades and class that you sold?

A. Not closely, no.

Q. Can you recall the length of time from memory that it took to handle any consignment of livestock that you handled in 1932?

A. Not an individual consignment. I know we had to carry many cattle for two or three days. That would be carloads. We very seldom carry any odd ones.

I cannot recall the number of days that we carried cattle over during 1932. I do not know the amount of sorting and selling that was necessary upon any of the consignments that I have had called to my attention, or any of the [fol. 1227] other consignments that go to make up this vast amount of sales. It is not possible for me to determine in advance of seeing the animals the amount of sorting that may be necessary for a particular market. I think it is not possible for anyone else to do it. I have no idea the number of animals that any individual salesman for our concern sold during the year 1932. I do not know the parcels into which those consignments had to be sorted for sale, and were sold during 1932. I do not know how many consignments all of our salesmen worked on during the year 1932, where two salesmen worked on the same livestock. That occurs very frequently. It is a daily occurrence. We do not keep a record of the work that is performed by each of those employees in the matter of selling. I do not measure the value of our salesmen in employing them by the number of carloads of livestock they can sell. That is not a fair basis in my judgment, to estimate the work of a man. I think it is not the prevailing practice at this stockyard to determine the worth of a man by the number of carlots he can sell. The sale of carloads as such are the exception rather than the rule with our concern. And the sales that I actually make range from sales of one animal up to sales of a carload, and in rare instances the sale of more than one carload at the same price. I do not think it would be possible for one of my assistant salesmen to show different pens of cattle to as many as fifty buyers and not close a sale.

It is sometimes true that I show a large part of our receipts and effect sales of very small number of animals. [fol. 1228] During the first few months of the year we started out with a low market. The summer months into the late fall, we ran into a high market, what we call high, cattle sold up around $10.25 to $10.35. From then on, we ran into a decline which was almost continuous until this spring. I find that livestock at the beginning of the year, the first of the year 1932, the month of January, that

on each day of a market I will find cattle that will range from the top price downward until you reach the lowest sale, and that between the top and the bottom will be live-stock that will sell five cents per hundredweight of the various grades and classes usually right straight through to the bottom. The smallest division in price per hundred pounds of a dollar is a nickel on any particular day. So that cattle ranging from nine to ten dollars would have twenty price ranges from nine to ten. And so on down with each *fron-* figure, you would have twenty variations for each dollar in price, so that if the price ranged from $4.00 to $10.00 you would have one hundred and twenty variations in price on the same day's market. Prices of the various grades and classes of cattle vary from day to day; and the demand for various classes of cattle vary from day to day and vary on particular cays. It usnally does. Yesterday, for instance, cows were stron-er and the steers were a quarter lower; competent salesmen must have a good memory. It is necessary for a salesman to [fol. 1229] carry in his head a great many details of transactions which he has that day, the money he bids and so forth. I carry the transactions of past performance only in those instances where I believe they will be of value. We do not have any idea how many of those cars you could handle in a year and handle them well.

Q. Do you have any idea how long it would take to handle the other grades and classes in the mixtures in which they come in carload lots? So that you could indicate to the Examiner or the Secretary the number of cars that a salesman ought to handle in a year to be an efficient salesman?

A. No, I would not be able to answer that.

Q. Notwithstanding the fact that you have had a great number of years of experience on this market and sold a great many cattle?

A. Yes, sir.

Q. Have employed a number of salesmen, have observed their work, and still you think you cannot answer?

A. No.

There was less income for 1932 than there was in the year 1931, which was produced under the tariff approved by the Secretary in 1923. There is actually less selling com-

missions and less buying commissions. The effect of the direct shipments, I would think, had quite a bearing on it. There was a reduction in general expenses for the year 1932 as compared to 1931. The net profits for the two years notwithstanding the drop in income was substantially the same, but the complete earnings were greater in 1931 than in 1932 from the fact of the salary end of it. I reduced my [fol. 1230] salary proportionately. We made a general reduction in expenses to meet the loss in general income. I reduced my salary and I reduced the salaries of my employees during the year. I did not reduce them in 1931. I reduced the items of advertising, travel and soliciting in 1932 over 1931. Auto expense was reduced. Local and miscellaneous entertaining was a small amount greater in 1932 than in 1931. Stationery, printing and supplies was much less in 1932. Our miscellaneous office expense was less. Horses and saddle was less in 1932. Our telegraph and telephone was less in 1932.

The salesmen of our firm are all authorized to solicit business under the rules of the Exchange. I decide when and where soliciting and travel will take place in connection with soliciting. I make the decision in each instance. I do soliciting myself as much as possible. Personally I solicit in Indiana and Illinois and nearby points. I go the end of the week usually. I pay the salesmen that are in my employ no more on account of the soliciting that they do. My salesmen are employed on an annual basis, and that is true in each case. They draw when they wish, weekly or monthly. We pay other employees that are not salesmen weekly.

I do not believe that I spend or that my employees spent any more money in the year 1931 or the year 1932 than should have been spent in the exercise of good sound business judgment. I operated our firm during the years of [fol. 1231] 1931 and 1932 on as little expense as it was possible in order to render proper service to our shippers. I might say our salesmen who go to the country keep a card of the railroad fare, gasoline, or whatever way they go, and their hotel expense and turn that into the office. We have done that in the last couple of years. The matter of travel and solicitation is carried in a separate account in our books, and it gives considerable detail as to expenses. After the expenditures are incurred, I make a careful examination to

determine whether or not in my judgment the expenditures are reasonable. I exercise a very careful supervision over that matter, and from the information I obtain from those inquiries I am able to say that those expenses, in my judgment, were both necessary, and the amount spent was not unreasonable. I think the same was true of the expense for travel and solicitation which was done in 1931. It is my opinion that the cost of selling the drive-in business in cattle as compared to the carload business is greater in the case of drive-in. I think we are getting a fewer number of cars that can be sold as carloads. The carloads that we receive are of necessity broken up into a larger number of drafts, necessitating a larger number of sales per carload, much greater now. That has been brought about by different methods of demand and more people shipping together in mixed carloads.

[fol. 1232] I was a member of a committee of the Chicago Live Stock Exchange that had to do with the presentation of material and testimony to the arbitrators during the year 1923. The requirements of the commission men during 1933 are much greater as compared with 1923. The rates which were fixed at that time as being fair and reasonable, was under much better working conditions than we are having at the present time. It requires a whole lot more work now to accomplish the same as it did in 1923. Livestock prices in recent months have been generally advancing. The livestock men are much more satisfied as regards the price. During all our period of time we have kept track of it, we have had only three customers who have complained about the commissions. We have kept track of them. I recall that during the month of July, 1923, cattle were selling around $7.00 and within four years after that cattle were selling at $14.00.

I feel that in a great measure the work of other cattle salesmen on the Chicago market, as well as my own work, determines the price that will be paid for cattle all over this country. I do not believe that the portion of my salary which should be charged to the service I render as owner, should be based upon what some other firm pays the manager who is not the owner, because, I, individually, take the risk that a hired man does not.

I feel that the profits of Lawler Brothers and Company may be attributed primarily to my own activities. I do

not believe that the use of capital, either invested or bor-
[fol. 1233] rowed, was a primary factor in the profits made by my company. If I employed a person for the purpose of managing the concern, and acting as its executive officer, and a cattle salesman, I would consider those two duties in employing such a man.

The variation in our expenses is not as great as our variations in our income from month to month. We have many weeks that we will lose considerably in our operations.

It would be impossible in the management of our concern to bring about a condition whereby our concern, which has a diversified business, can create income which will equal or exceed our expenses from week to week or month to month. That is for the reason that the corn fed cattle are pretty well marketed as we come into the summer, and the grass fed cattle are not ready to ship until along in September. It would be impossible to change either.

Q. You had an average of 642 cars for the salesmen of cattle including yourself, as against a market average of 392 cars, on the average for all salesmen.

A. Market average of 642?

Q. No, your salesmen, including yourself, sold on the average for the year 642 cars each, and the market average——

A. Each, oh, I see.

Q. —and the market average for each salesmen so engaged was 394 or your average was 248 greater than the market average. Have you any knowledge or opinion why [fol. 1234] your average was greater than the market average?

A. Well, like any other business, some are more aggressive than others.

Q. Sir?

A. Some are more aggressive than others.

Q. You do not employ your salesmen on the basis of how many cars the- can sell a year?

A. Never, never did.

Q. The average for each of your salesmen for each market day of the year, considering you had about 200 market days, would be around three, a little over three, three cars per market day. Do you feel that that average was ample to keep you and your other salesmen fully employed dur-

ing the year in the performance of the service which you render?

A. How are you running the truck business through there?

Q. That is right in there, carload equivalents.

A. Yes, I do then.

Cross-examination:

The business for our firm for 1933 compared with a similar period for the year 1932, receipts and net income, about sixteen percent less I would say for the year 1933. I think that the loss was neither greater nor less than the market.

It is not unusual to show a load of cattle fifteen times to buyers. I would not say that we often sell a single carlot, single ownership to the first buyer. It does happen right along. Most of the sorting occurs with mixed species. It is necessary to separate the male from the female of the [fol. 1235] yearlings and sell to two different classes of buyers now more than we used to. We used to sell them together. It very seldom happens in our business that several owners, two, four or six owners would ship in a single car where the kind and quality of the livestock would all be the same. When that happens we put them in separate pens. It is more satisfactory to our customers to handle them that way, as each has a different idea as to the value of his own stock. They are better satisfied with the results if they know that their livestock had been sold on their own merits.

A co-operative shipment coming in one carlot and of the same grade, kind and quality, would be handled in the same manner. We would not handle them as if they were owned by one man only. We would sell them in different ways, odd heads, we might leave them together, if they were just alike, but, if there is any number like six or seven, to one man, or five or six we would take those out and sell those separately. It would not make any difference if they were shipped by a manager of a shipping association. I suppose there would be about three hundred and fifty to four hundred cars of cattle received on the average day's market on any one of the first four days of the week, in the month of June, July or August. The addition of fifty cars of cattle would make a difference in the average day's

market. If shippers were to ship to our firm 50 carlots, [fol. 1236] we would accept them and try to dispose of them to the best advantage, naturally. We would be able to sell them.

Q. I wanted you to assume now that you and two others, you and two other salesmen had fifteen carloads of steers, single ownership, to work on, whether you believe that you three would sell those fifteen carlots per day on an average throughout the year for all market days?

A. Yes, sir.

Q. There is testimony in this record to the effect that one firm received but fifty carloads of cattle in a year; in your opinion should the rates be such as would give that commission man who received but fifty carlots of cattle a year, a wage or profit or salary that would keep him in business?

A. No, it could not be done.

Q. All right, then, what percentage of your total salary, income or withdrawal would you set up as being properly taken for the manager's duties?

A. Not over 20 per cent of it.

Redirect examination:

Q. Now, what kind of a market did you expect the salesman to encounter when you said he would sell fifteen cars every day of the year, or an average of five per salesman?

A. Well, you would have to take the average of the market as they come.

Q. Are you able on the witness stand to indicate for me what the average was they come?

A. No, I would not be able to.

Q. Do you have business arriving to your firm that will admit of the employment of a salesman so that they can sell five cars on the average per person per day of steers or other cattle?

[fol. 1237] A. Read the question, please.

(Whereupon the question was read.)

A. I would not think so.

Mr. Miles: Is that because you don't get them?

A. Well, primarily, yes.

Mr. Boyd (continuing): Well, if the business of your firm will admit or you think you would be able to sell, on

the average, 15 cars a day, why did you not sell them all yourself?

A. Fifteen cars?

Q. Because that average approximates two-thirds of all the business that your firm handled during the entire year with all of the force you had.

A. Well, it would not be possible to sell fifteen cars every day myself and do it justice.

Q. Would the total number of cars handled by your firm in cattle, all kinds, truck, rail and otherwise, was 4496 cars, fifteen cars a day for three salesmen amounts to 3,000 cars per year, assuming there are 200 market days, each and every day. Do you follow me?

A. Yes.

Q. Now, on that basis, do you believe that you had too many men working for you during the year?

A. Well, I know that we haven't.

Q. Well, if your men, if you expect, would expect your men to be able to handle and sell fifteen carloads per day, that is, every market day, why do you keep as many salesmen as you had in view of the fact that the average of your salesmen was 642 cars per year, or the average per market day of a little over three cars? Do you understand the question?

A. You had better read it.

(Whereupon the question was read.)

[fol. 1238] A. Well, we find it keeps us busy handling what we are getting, with the help we have got. I thought our range was higher than it is.

Q. Do you still think you could handle fifteen cars per day with the three men on each market day of the year.

A. Not in the way they come.

Q. What did you think you were answering, when Mr. Miles asked you the question. What kind of shipments were you discussing, and what kind of shipment did you have in mind?

A. I had in mind practically straight carloads of steers.

Q. And you had them in mind——

A. Not to any great extent mixed cars of steers.

Q. And did you expect those straight carloads of steers to be sold in one or twenty drafts per car?

A. Very small number of drafts.

Q. Do you have very much of that kind of business?

A. No, just a fair amount, I would say, from these records here.

Q. Then, you do not intend that your testimony shall be used for the purpose of indicating what your salesmen could reasonably be expected to do in handling the type of receipts that come to your firm?

A. No, I figured our percentage was higher than it is, I didn't know it would run so light.

Q. What were you basing your answer on, what you thought your salesmen were doing?

A. From the fact that we seemed to be busy all the time, early and late.

Q. You think that the amount of business which you actually did sell, the business, as it comes to your firm, constituted the capacity of your firm on most market days?

A. I would say on seventy per cent of the days, yes.

Q. When the buyers leave the market, the market day [fol. 1239] closes, is that not so?

A. Well, practically; you often have to go down and bring them out later, you know.

Q. But you do not regulate the closing time, but the time the market closes is governed by the time the buyers actually quit buying?

A. And the orders are filled.

Q. And the orders are filled, or you sold out, as far as that day is concerned, you finish when you sell out?

A. Yes.

Q. Now, how many of those fifteen cars of steers would you expect would be carried over from day to day if such a thing could transpire that you could get fifteen cars of cattle on each market day of the year?

A. It would depend on the market.

Q. Do you consider it practical or possible, based upon the years you have been managing a responsible concern, selling cattle at Chicago, that by any means a condition could be brought about, whereby you would have for sale as many as five straight cars on every market day of the year that would be sold in as low as 1¼ drafts per car?

A. No.

Q. Is it not necessary, in the conduct of the business at Chicago, to be able to have a force that will enable you to sell on a market day the grades that you receive to sell

them in the parcels necessary to sell them on your busiest days?

A. Read the question please.

(Whereupon the question was read.)

A. Yes.

Q. And there may be some days, you think about 30 per cent, where that capacity has not been reached?

[fol. 1240] A. I would say so, yes, that is, to get the full strength of the market.

Q. Now, you said to Mr. Miles that if you are out in the country and some ten owners indicated that they were going to ship fifty cars to you on a day and if they did ship them you would sell them, what kind of cattle did you have in mind then?

A. Well, it would be an unusual condition where you would have that; in fact, no one community would ship that number of cattle, fat cattle, at the same time; they know they would be working against themselves.

Q. That is a condition that is not reflected in this situation, on this market under any circumstances?

A. Under no circumstances.

Q. Have you ever had such an occasion as that arise?

A. I do not know of anyone that has had it; they could have had it in the days when the westerns were coming.

Q. Can you conceive that condition being applicable to the conditions confronting commission men today?

A. No.

Q. So you would think that that situation would never develop with you?

A. No, it would not.

Q. Or any other commission firm at this market?

A. It has not all the years I have been in business.

Q. There are a limited number of hours that a salesman has each market day, to perform his services, is that true?

A. Yes, sir.

Q. And that is limited, is fixed by him or by whom?

A. By the Exchange.

[fol. 1241] Q. What is that time?

A. Eight until three.

Q. Now between eight and three are the number of hours, maximum number of hours, seven, which a salesman may sell cattle?

A. Maximum, yes.

Q. Maximum. Now, that seven hours may be limited by either the arrival of the livestock or by the action of the buyers, is that not true?

A. Yes.

Q. Or it may be limited by the fact that the buyers fill their orders or the market is sold out?

A. Yes.

Q. Now, does it follow that simply because a steer is a steer, that that indicates the amount of time, effort and judgment that will be devoted in the sale of steers, as such?

A. None at all.

Q. Are there not as many distinctions, grades and quality represented in your steer receipts as in other receipts?

A. Practically the same.

Q. Now, to go back to your fifteen carloads which were discussed, and which I understand you to say could not be used as a basis for the determination of work that you could do or that each man could do, how many various grades and classes could those fifteen cars come in?

A. You mean of steers?

Q. Yes.

A. They could come in many classes.

[fol. 1242] Q. And the length of time that it will take to dispose of them or the number that could be disposed of on a day would depend first upon the number of owners, upon the grades and classes that went to make up the loads and the individual loads, the number of drafts of parcels that they would have to be sorted into, or the number of times you might have to re-sort them, would it not?

A. Yes, sir.

Q. As well as the market for the various kinds and grades of which that shipment would be composed, or those shipments would be composed, the markets could be slow or fast with reference to the various grades of steers that were in that shipment?

A. That would make a great difference in time.

Q. Or the reverse could be true?

A. Yes.

Q. All of which you would have to take into consideration to determine?

A. Yes.

Q. Did you do that, in answering Mr. Miles' question?

A. No, I did not.

Q. Then, what have you to say about the question and the answer?

A. Well, as I said before, I was considering fat steers only and for single ownership and practically straight carload lots, and furthermore, I thought our proportion was much larger than it shows here.

Q. And your answer was based upon a misunderstanding or a lack of knowledge as to what your actual performance was during 1932?

A. I would say so.

Q. And, in making the answer, you were considering, in part at least, your actual performance, or what you thought your actual performance was?

A. Yes.

[fol. 1243] Q. And about that you say you find you were mistaken?

A. I do.

Redirect examination:

Q. The orders indicate the method that they follow and in order not to read the exact language of one or the other of the orders, a performance or a standard has been set up in previous cases, that performance, as will be observed from reading the orders, does not specify the number of sales that have been required to meet that performance. Do you believe that rates should be determined on rail business, based upon the number of carloads in the case of mixed cars, you would have to take what they call the experience of the firm and take the number of cars and add them together until you reach what is called a carload equivalent and decide that salesman performance should be reduced to a carlot basis, or do you think the method of drafts which indicates the number of sales would better reflect the performance of a salesman?

A. I would think the number of sales or drafts.

Q. Why do you think that carload basis would not be a proper basis?

A. Well, the number of drafts constitute the amount of work that is necessary.

Q. Do you think, do you mean, by that, that the varia-

tion between cars would be so great that the carload would not be representative?

A. I think not.

Redirect examination:

Q. Mr. Lawler, I would like to get the record somewhat clearer with reference to your answer to Mr. Miles about the 50 cars which you said, which I understood you to say you thought your firm could sell next Wednesday. What kind of livestock did you have in mind that Mr. Miles was inquiring about that would comprise that consignment.

[fol. 1244] A. My thought was they could be sold——

Q. What kind of livestock, first, did you think Mr. Miles——

A. —you could not have anything else, but they would have to be all steers in that kind of a shipment; you don't have mixed shipments of those kind; practically, it would mean all steers, fat cattle, corn fed cattle.

Q. You said that 400 cars would represent a good day's business for the stockyards?

A. Of cattle, you asked me if it was running that way, and I thought it would run about 400 cars of cattle for the first four days on an average.

Q. I think Mr. Miles asked you about that?

A. Yes, sir.

Q. That would be 400 cars of all kinds of cattle?

A. Yes, sir.

Q. So that 50 cars probably would be more than the normal run of that sort of livestock, of good fat steers.

A. Yes, there would not be 50 cars of good fat steers out of that kind of a run.

Q. And 50 cars would comprise all of the animals for each day of the four days of that kind of stock on the market of all firms.

A. Of good to choice cattle.

Q. So that the question contemplated your firm alone selling all of the good to choice cattle that would be marketed on the first four days of the week.

A. Repeat that, please.

(Whereupon the question was read.)

A. Yes.

Q. In all your years of experience, that condition has never arisen?

A. No.

[fol. 1245] Q. How much prime livestock, prime steers are received at the market?

A. Oh, that is uneven, a few cars maybe a couple times a week.

Q. But it represents a very small proportion of the total receipts?

A. Very small, because, you see there are only a few prime loads coming at any time.

Q. And the most of them come around Stock Show time?

A. No, we have a few loads each week.

Q. But you get a larger proportion then?

A. A larger proportion are fed for the Stock Show time, yes.

Cross-examination:

I could not tell you from memory the greatest number of animals, that is, of cattle, that our firm has received in any one day this year, either carlots or by the head or both. As to whether I can tell you the greatest number either by carlot or by head that I personally sold any one day this year without any salesman assisting me, I have never sold any number of cattle without assistance, as I said before, we all work and show all of the cattle in my end of the business. I cannot tell you the greatest number, either by carlot or by head that one salesman assisting me and I have sold on any one day for this calendar year; I have never kept track of it. I could very easily do it, if I had been told it would be asked for and kept track of any day, I can tell that. I could tell that because we mark our tickets as we sell them, individually, and the other salesmen the same.

[fol. 1246] Mr. P. T. Dolan, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 7747 Union Avenue, Chicago. I am a partner of Dolan and Ludeman Company, doing a general livestock commission business at Chicago. I am the principal owner. My partner Mr. Ludeman died the last week of December.

Referring to sheet 1-A of the work sheets, Government Exhibit 16, which carries the payroll of Dolan, Ludeman & Company for the year 1932, the name and the number of the employees of that company and the type of service those employees renders is as follows: P. T. Dolan, owner, cattle salesman; F. C. Ludeman, No. 2, cattle salesman and owner; and H. Roll, 3, office manager; and W. M. Kirby, 7, at the present time he is laid up with a broken hip and has been for the last year or two; C. B. Auld, 6, yardman; R. B. Dwyer, 4, butcher salesman; Phil Foley, 8, yardman; H. A. Youngerman, 11, stenographer and general office work; Homer Dye, 5, hog salesman; and James Henlicki, 9, yardman and helps sell a few hogs too. Mr. Kirby was hurt some time ago around the stock yards in line of duty. He was standing in the cattle alley and fell on the ice and broke his hip. He has not been able to do a day's work since. The amount which is shown and which was paid was for past services.

[fol. 1247] Mr. Dwyer sells butcher stuff. Mr. Auld works in the cattle alley and is a yardman; Foley works in the hog alley or anywhere he is told to work. Mr. Dye sells hogs and Mr. Hendricks in cattle and hogs. Mr. Ludeman helped me in the steer alley a great deal of the time.

I started in as a yardman and have done practically every part of handling cattle since that time. I worked for Smith Brothers Commission firm. That is the only firm I was with. When I started in business for myself, I had been selling cattle for some time. I have sold all kinds of cattle and now devote most of my time to selling steers. If the occasion arises, I can sell butcher stuff. I have been selling cattle since around 1911 or 1912.

After I went in business for myself, I sold butcher stuff for several years. I started in helping Mr. George Smith sell steers.

We draw business from the states of Nebraska, Colorado, Texas, South Dakota, Illinois, Indiana, North Dakota, Montana, Minnesota, Missouri and Iowa. Most of our business is drawn from Iowa, South Dakota, Nebraska and Illinois. And most of our hog business comes from Illinois and Iowa. I exercise general supervision over the business, and employ the persons who work for the company. I also deter-

[fol. 1248] mine the salaries to be paid them.

Our truck business has been increasing more rapidly during the last four or five years.

I cannot give you exactly the parcels into which we have to sort our business from memory. I do not know the number of drafts into which we had to sort straight cars of cattle, in 1932. I do not know the number of drafts and the number of sales that were required in the handling of straight cars, plural ownerships. I do not know the number of drafts that were required in selling our truck business. I do not know the average number of drafts per account sales. I do not know the actual number of carloads of cattle that were sold by Dolan Ludeman during the year, or the number that came by truck.

We clear a firm by the name of Haime and Renecker. We have no written contract with them. Of the three hundred fifty six carloads of cattle and calves received by Haime and Renecker during 1932, I sold the steers and Mr. Renecker sold the butcher stuff. With reference to the 1653 cars that were consigned to Dolan and Ludeman, the service rendered by Haime and Renecker would be small. Mr. Renecker would help me out if I got into a place where I needed extra help. He might sell some of our butcher stuff if we happened to have too many that day for one man to sell and get rid of them. They would assist with the yarding and help with the water and things like that. There was no change in the firm of Haime and Renecker during the year 1932.

[fol. 1249] Q. The 1,653 cars that were consigned to you, according to the record, were divided as follows: 713 cars of straight cattle, single ownership; 339 cars of straight cattle, plural ownership; mixed cars, single ownership, 22; mixed cars, plural ownership, 25; drive-ins, or equivalents of 174 cars; your seconds were 380 cars, or carload equivalents, and, reduced to percentages, the straight cars, single ownership, was 43 per cent, as against the all-firm average of 54. Your straight car, plural ownership, was 20 per cent, against an all-firm average of 15. Your mixed car, single ownership, was 1½ per cent against a 25 per cent average, all firms. That is 1½ as against 25. Your mixed plural ownership, was 1½ per cent against a market average, all firms of 4 per cent. Your drive-ins were 10 per cent against a market average of 13 per cent. Your seconds were 24 per cent against a market average of 11½. In the selling of livestock, what proportion of your time is devoted to the selling of steers?

A. Practically all the time.

Q. And who practically all the time sells your butcher stuff?

A. Mr. Dwyer.

Q. Are you able to say or able to divide the number of cars that comprised your receipts of butcher stuff and the number of cars that contained steers only?

A. No, I am not.

Q. There is no distinction made?

A. No, I could not.

Q. So you are not able to say the amount of business which you sold and the amount of business that Mr. Dwyer sold?

A. I am not.

Q. Are you able to say the number of livestock that Mr. Renecker sold for you during the year?

A. No, I am not.

Q. Are you able to say the number of livestock that you sold for Haime and Renecker during the year?

A. No, sir.

[fol. 1250] I am responsible for expenses incurred by the company. They are incurred under my supervision. I am not able to state why the income and expenses exactly offset each other in 1931.

Hardly any of our employees solicit business. We have got about all the business we can take care of without soliciting. Very little soliciting is done. Our present force is busy most of the time handling the business that is coming to us.

I did make a number of trips to the country last year, almost every Friday and Saturday. The fact is I have to work almost seven days a week as it is. The trips to the country were for the purpose of answering calls that are written to me and sent in to me to come out and look at their cattle and see what sort of stock they have and advise them, after looking at the cattle, carry a mental picture of those cattle, and write them occasionally and tell them, in my judgment, when is the best time to come with them. They insist on that kind of service with me.

So that the money that is charged on the 1932 blue audit for traveling, soliciting, represents mostly all answering people's demands to go out and look at the stock. When responding to such requests, I occasionally stop at other

places where a neighbor will tell them I am coming out [fol. 1251] and they will tell him they want me to see them. A few times I have stopped there and solicited business. I send Mr. Dwyer out on trips of that kind possibly once or twice a year. And Mr. Kirby once a year, possibly. But most of that service is performed by me. I don't believe I have ever gone into a community the last five years that I have not been written and asked to come out. I have three different places right now where they have asked me to come, or at least two places that I have not been able to get to.

Q. I indicated this morning that the record disclosed that 43 per cent of your business is distributed to straight cars, single ownership. Now, in the straight cars, single ownerships, business, I find, from an examination of the work sheets, that during the month of January of 1932 you received 1,568 head of cattle in single ownerships which arrived in 69 cars, and that there were 179 drafts. Now in the month of January, for plural ownerships, you had, in January, 684 head arriving in 27 cars with 167 drafts. In July of 1932, you had 825 head of single ownership cattle arriving in 37 cars with 71 drafts. During the month of April, you had 238 head of plural ownership straight cars arriving in 9 straight cars with 70 drafts. During the month of August, you had, 1,367 head arriving in 56 cars, single ownership, with 148 drafts. In the month of February of 1932, you had 495 head arriving in 19 straight cars, plural ownership, with 135 drafts. During the month of December, you had 1770 head arriving in 76 single ownership cars with 150 drafts. During September of 1932, you had 682 head arriving in 25 plural ownership cars with 140 drafts. Now, during 1932, during the month of January, you had 126 head of cattle arriving by truck with 56 drafts. During the month of June, you received 560 head of cattle by truck, necessitating 131 drafts. During the month of February, you had 151 head of cattle arriving by truck, necessitating 59 drafts, and during the month of September of that year, you had 463 head, cattle, arriving by truck, with 153 drafts. I understand that it would be [fol. 1252] difficult for you to carry all of those figures in your head, Mr. Dolan?

A. It is not difficult. It is impossible for me.

Q. But they represent an illustration of the varying number of drafts for the varying number of head in the different modes of arrival, which indicates that the months vary, both as to the number of head arriving which are distributed to the various modes of arrival, as well as a varying number of drafts per head during the various months of the year. Can you recall, from memory the circumstances surrounding the selling of any of the livestock in the numbers and necessitating the drafts which I have indicated?

A. No sir, I cannot.

I cannot recall the kind of market that confronted me in the sale of livestock on any of the days during any of the months that have been enumerated. I don't recall the difference in the market from one day to the other that occurred during 1932.

As to whether I can indicate the demand for any class of cattle on any market day during 1932, I don't recall any particular instance. I cannot recall the details of the various transactions done by me during the year 1933, unless there was something brought up, some particular deal that I might remember right now; but, off hand, I cannot remember a thing about it and don't make any effort to. I can remember the circumstances of yesterday's transactions. As to how far back this year I am able to recall, at the present time, circumstances surrounding the market-[fol. 1253] ing of the various kinds of cattle which I sold on this market, this year, there is only one way I can answer that. There might be some particular instance that if brought to my mind, that I might recall it vividly, and there might be a thousand other cases I cannot recall a thing about. I don't make any attempt to remember them. The thing that I am most concerned about during the day's transactions is to get the last possible dollar I can for our customers; that is what we are paid for. I have not made any attempt to determine the differences in costs in handling truck business and car business. I have not attempted to determine accurately or otherwise the costs to me of handling any part of any of the business that is consigned to me for sale on commission. I have not attempted to determine what the office costs are or what the costs of the office may be for handling of straight cars or mixed cars. I figure that is up to the people that patronize this market.

They come any way they want to. My position is to give them the best service in return for that, regardless of how they come in or how they arrive. I don't know how many head of livestock or cars that Mr. Dwyer sold last year. If it was a vital question or factor in connection with the business, I would have to keep a record of it. I think Mr. Dwyer whenever he sells anything is capable of selling what he attempts to sell.

[fol. 1254] I haven't any spare time from day to day. I get down around seven o'clock, and call it a day when we get through, usually anywhere from five to nine o'clock at night. Our employees work as long as there is anything to be done by them. They show up in the office around six o'clock in the morning. The stenographer gets down around seven to seven thirty, and works like the rest of the boys. They work until the work is done.

Under the head of advertising there is an item of circulars. The stenographer and myself supply the information for the circulars. It carries information with respect to cattle, hogs and sheep. I supply the cattle information and the stenographer gets the information from the hog salesman and the sheep salesman to put in. I determine to whom those circulars shall be sent. Customers are the persons that are included on the list, mostly actual customers. Once in a while a man will write in and tell us he intends to ship to me and wants the information, and in that case, his name is put on the mailing list for a circular. We remove a name from the circular list in the main because they are shipping elsewhere to some other firm, or if the circulars are returned unopened, the name is taken off the list.

[fol. 1255] I presume the item of $157.80 described as specialties and novelties during the year 1932 would be mostly lead pencils. We give lead pencils to customers; the pencils have our name printed on them. We send market papers to our regular customers on request. I believe we would send all the papers we are requested to send. I would take it for granted that he is not getting the paper from somebody else, because two papers would not do him any good. I understand the Drovers Journal would not mail two copies to the same man. We would take the man's name off the Drovers Journal list depending on whether he is a man that feeds the year round or whether he feeds

just one load a year. If he just feeds one load of cattle a year, and disposes of that one consignment, he is not vitally interested in getting the paper until he gets another load of cattle. I judge we are sending approximately 1,000 customers the paper.

I would say that I am acquainted with practically all of our customers. I would have to refresh my memory to answer as to the shippers who have been shipping to me the longest time. I have quite a number that have been shipping to me for I think ever since I went in business, and to sort out a bunch, it would be a little difficult. I could give you the names, if you wanted.

[fol. 1256] Gus Rist, a South Dakota man has been shipping to me since 1911. He has not been handling the same kind of cattle; the last few years he has been handling a different class of cattle. He has been handling a better class of late. They are all fed cattle.

William Mess, an Iowa shipper, forwards mostly all good cattle and I don't believe he has shipped a load away from me since I started in business. Mr. Rist has not shipped an animal away from me since I started in business. I write a good many letters to my customers. Very little, if any, of that correspondence should be charged to advertising. Most of our correspondence deals with actual transactions and with advice as to marketing. Our circulars are mostly printed by the Drovers Journal, and are mailed on Wednesday night or Thursday. We used to have them once a week, but since times got hard we tried to cut down expenses, they go once in two weeks. We have done that for possibly a year. We have had inquiries from our shippers as to why they have not received circulars more frequently.

We have been criticized a little, for not sending them out weekly. Times have been extremely hard in these days and if you are going to pay your boys a living wage, you have got to trim your expenses every way possible, even sometimes when it looks like poor business to do it. We have an expense item for horse and saddle. We have two horses [fol. 1257] owned by the partnership. We keep the horses in a boarding stable. The cost in keeping the horses has declined a little. The horses are delivered to us and are picked up by the employees of the yard company when the day's work is finished. I usually get on my horse to go to

sell cattle around eight o'clock. I spend my time on horseback from then until about three o'clock in the afternoon. Very seldom have time to go to lunch, have a sandwich sent over to the alley and eat it while I am working. When it rains I stay out and take it.

It is an old saying in the yards that rain always has a tendency to slow up the market. The harder it rains and the colder it gets, the longer you are out. One day last winter we were compelled to stay out there at 19 below zero from early morning until 3 o'clock in the afternoon. I wouldn't go through it again if we had our commission rates raised twice, I don't think. I recall on that particular day that we did not effect a clearance. As to whether it takes longer to handle the same number of animals arriving by rail or by truck, it never entered into my thought. When we get anything to sell, I sell it for all I can get for it, regardless of how they come in and for the time given each animal or each particular shipment, I do not pay any attention.

[fol. 1258] Cross-examination:

I cannot tell offhand how long Mr. Dwyer has been with me. He confines his activities mostly to the selling of butcher cattle. I confine my time mostly to selling steers, some straight loads of heifers. I said Mr. Ludeman died in December, 1932. Mr. Dwyer and I have not been selling all the cattle since then. I hired a man. We hired him shortly after Mr. Ludeman died. I don't recall the month. He is Earl Leonard. He helps me with the steers. Mr. Leonard has been here quite a number of years. He was with the Northwestern Commission Company for awhile and also with the Iowa Livestock. He is not a partner in the firm. I think I pay him about the same as Mr. Dwyer. Mr. Leonard had some friends that shipped to him. I don't know to what extent. Mr. Ludeman when living helped me with the steers, used to sell, I believe, the bulls a part of the time. I don't know that Mr. Ludeman and I ever sold all the cattle consigned to us. He and I were in partnership around thirteen years.

The firm of Haime and Renecker is an individual proprietorship. Mr. Renecker does not employ anybody to work for him. For the last several months, Mr. Haime has

been almost incapable of doing anything. His health has been very bad. Instead of Haime and Rennecker being a sole proprietorship as figured, it is a partnership. Mr. [fol. 1259] Haime was his own boss. I didn't make much of an effort to find out what he does. He does not sell anything very often, I believe. Mr. Haime does quite a lot of help in the office. He helps the bookkeeper at times when he is feeling pretty good, he yards quite a few cattle, helps sort them. Our firm receives all species of livestock. I think I charge them around thirty per cent for clearing their business. My bond covers that firm. Mr. Roll is part owner. It is up to me to determine how much each of the partners will get. I decide that. Mr. Kirby used to yard some, used to sell some, a few head, occasionally, helping out. He was active all the time up until the time he got hurt, which was two or three years ago. He has not been able to render a great deal of service since. We still carry him on our payroll. If the State required industrial insurance at that time, I didn't know it. We have been taking it since and paying plenty for it.

Since 1932 I do not know how much I sold for Haime and Renecker. We sell all of his hogs and his sheep. Our sheep salesman is Aubrey Williams. He sells sheep for more than one firm.

Miles Dodd fits into our organization the same as Haime and Rennecker. Mr. Dodd receives all species of livestock. He sells his own steers. We sell his butcher stuff. Don't know whether his business runs more to steers or butcher stuff. We do all his office work. He doesn't employ anyone. We charge him twenty-five per cent. I would not say positively.

[fol. 1260] Seconds are handled the same as any other shippers. Our hog salesman sell- the second hogs. It seems to me he gets a little something for selling some of these seconds. I could not explain what that is for the record. It came up two or three years ago, and if I remember he asked me if he could get part of that commission, and if I remember right, I told him he could, and what it was, I don't know. If that is so, that is applicable to all seconds handled by us. I don't know what proportion of the commissions we give him.

We have seventeen or eighteen regular pens for handling steers and we have an overflow alley that the yard

company generally give us during the busy time. Some good neighbors around from whom we could borrow extra pens if needed. I could not tell you how many pens we have in our butcher alley. They are close together. Mr. Dwyer does the selling and sorting himself. I very seldom assist him in arriving at his judgment as to the price he will ask. I generally sell steers on my own judgment. We have pretty much the same force this year as last. I think the salaries are pretty much the same, but I would not say positively. As to checking the payroll for 1932 I would say that the salaries are the same now as then. I go to the hog alleys and sheep alleys very seldom. I could not tell you the last time I was in the hog alley. I exercise very little supervision over the hog salesman. I do not confer with him in respect to sorting or pricing his hogs. He acts on [fol. 1261] his own independent judgment. We employ our help on a monthly basis. We do not have a great deal of change in our clientele. I would say that when my customers ship to Chicago, they ship mostly to me. When Mr. Ludeman was living I did most of the managing of the firm. I don't determine at the first of the year or at any other time whether I am going to require the services of all our employees. The calendar year in my business is the same as the Fourth of July or any other day. I mean it runs about the same all the time. Most of our employees have been with us for quite a while. I would say I generally figure on using our employees the next month at least. I figure that on the basis of past performance, that is a guide to me in my judgment. I might say that Mr. Roll is substantially in the capacity of an employee. The division of the profits at the end of the year is up to me. Mr. Roll practically does nothing but office work. He does not make any trips to the country.

On my trips to the country I go by train. I never owned a car. I never had enough money to own a car.

When a shipper has asked me to come to the country, he generally meets me at the train and we go out and look at his cattle, and he expects me to take a good look at whatever he is feeding, and if he is ready to go right at that time, to tell him whether I think he ought to come next Monday or next Wednesday, or if they are ready to come in three months, he wants me to carry those cattle in my [fol. 1262] mind, if he writes me and asks me what that

class of cattle are selling for, and to give him some kind of an intelligent answer. He does not pay any of my expenses. Before I go out I do not know how much livestock a man has unless he tells me. If I thought he was entitled to any consideration at all, I would go irrespective of the volume. I have made those calls on our truck customers, quite a number of them. They are just about as touchy as the rest of them. They don't want to be slighted. I would not think that they used similar services from other commission firms on the Chicago market, as most of these people are pretty honorable men, and I don't think they would want to ask others to come out and duplicate the service. They ask the man to come out that they expect to ship to. I have no way of checking that up any more than conversation with them. I always get the livestock where I make those visits. There may be times when I would not, I do not recall any specific instances. Mr. Leonard's salary is determined, by considering the times we are going through, and what you think your business can afford. I don't know whether his employment by me was a promotion in salary, I think he was getting more, possibly. He was out of employment when I hired him. I think Leonard works a little bit more on the cheaper cattle. He is qualified to act independently; and believe the boy is all [fol. 1263] right. I don't recall any time during his employment when I have left all the responsibility to him. When I am away Fridays and Saturdays, Mr. Dodd and Mr. Leonard will sell the steers. He would sell them, but Mr. Dodd is an older man, and I think he would possibly confer with him a little before they would be sold.

A man called me up this noon from Western Iowa and said he had some hogs. I told him, "Under the system they are going under, you know as much as I would or anybody else. I would not try to tell you what to do with them."

Quite a few of our customers come with their cattle. They are around the alleys w-ere we can talk about any instance in regard to the sale. As to whether it would be of any importance for me to know how many Mr. Dwyer sold, I would not try to bother my brains with numbers. I am very poor remembering numbers and I would not make any effort to try to remember them, the number of cattle

he sold. The man that gets the business that we do would have to have a butcher salesman to hold our business.

As to the amount of business handled by Mr. Dwyer, being an important factor in the profitableness of his service to our firm; we look to the customer, not to us. We have to give service to the livestock men. I would not dare to answer what volume of butcher stuff I think our firm should have to warrant the employment of a butcher salesman, [fol. 1264] do not know how to answer it. As to whether Mr. Dwyer could handle more butcher stuff for us if we received it, I couldn't answer that either. Just the same as asking you if you could examine forty-four witnesses tomorrow if you had them. You don't know what conditions you would have to meet. You could answer that about as near as I could answer this one.

Mr. W. A. Peterson, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 6636 Harvard Avenue in Chicago. I am one of the partners of Peterson, Turnbull & Company which is composed of Mr. Turnbull and myself. I have been engaged in the commission business thirty-four years the 17th of last January, in the livestock commission business. Prior to that I had experience in feeding and shipping, buying of cattle in the country and hogs. When I first came to Chicago I sold hogs and handled my own hog trade through Bacon Dawson and Company. The partnership of Peterson Turnbull and Company was established in 1918. I sold hogs for ten years and then I went to the cattle alley after that, and have been selling cattle for twenty-four years. I have sold all kinds of cattle. I make a specialty of the butcher stuff, but help with the selling of steers, help sell anything there is in the alley. I now sell the butcher stuff. [fol. 1265] The only assistance I have in the alley in selling — from Charlie Beringer who sells the calves. Charlie Beringer and one other boy do the yard work in the cattle alley and we have one yard man in the hog alley.

We clear Lambright-Keyes and Huston, A. F. Steward, under the firm — of Steward and McIlhaney and Charles

Moberly. They constitute all the firms we clear. Lambright-Keyes and Huston is out of business now. Lyman Keyes is still clearing through us, since the first of the year, 1933. Does business under the name of Lyman Keyes Commission Company. We have different arrangements with each of these firms. The partners determine the policy of the company. The partners employ such help as is necessary. The partners have always decided what advertising shall be done; either Mr. Turnbull or I would decide when market papers will be sent and to whom they will be sent. We send it when feeders and shippers request it and where we thought that it was necessary.

We purchase memorandum books and lead pencils for advertising purposes; and those shippers' books and pencils carry our name. Either Mr. Trumbull or I write the circulars. Mr. Donahue supplies the hog information. He is our hog salesman. We send out a circular once a week, sometimes once in two weeks.

[fol. 1266] I make some soliciting trips. The work papers of the Government indicate that I spent $196.00 during 1932 personally in the solicitation of business. I went to the country to look at cattle, any time that I make a trip to the country that there was any charges on. I have made a lot of trips to the country where there were no charges because I was not soliciting business. I have got two farms down here in Illinois, I wish somebody had them. I do not charge the money spent in making trips to my farms. I made such trips to the country soliciting to look at cattle at the shippers' request. Sometimes I looked at other people's cattle on such trips.

Q. I have before me the recapitulation of the analysis of the commissions and other statistics contained in the work papers of the Government for the year 1932. They divide the business into that which arrives by rail, that which arrives by truck, and the business that is sold for speculators. The rail business is divided up into single ownership cars, that is carloads of cattle and calves, having but one owner; it is divided also into plural ownerships, that is, where they have more than one owner; then they take up mixed cars, single ownership, which contains cattle, calves, hogs or sheep, or any of them except cattle and calves, and then plural ownerships the same way, and they give the number of head, the number of owners, the account sales,

and the number of drafts, and that is given for each month separately during 1932. During the month of July of that year, Peterson and Turnbull had a total of 398 cattle arriving in straight cars with single ownership, there were eight owners, eight account sales and 23 drafts. During that same month you had 91 head of plural ownership with four account sales and four owners and ten drafts. During the month of October you had 506 head of cattle, single ownership in straight cars, with nine owners, nine account sales, in 29 drafts. During October, you had 729 head of plural ownership cattle with 76 owners, 76 account sales, and 274 [fol. 1267] drafts. During October you had 438 head of cattle by truck with 112 owners, 112 account sales and 226 drafts. Do you follow those figures generally?

A. Yes, we have a record of all of them there.

Q. During November you received by rail, single ownership, 549 head with 19 owners, 19 account sales and 61 drafts; during November you received 225 head in plural ownership, with 25 owners, 21 account sales, and 70 drafts; during January you had two single deck cars and one double deck car of plural ownership, mixed No. 2, which contained 34 head of cattle with four owners, four account sales, 15 drafts, five head of calves, two owners, two account sales and two drafts; 37 head of hogs with one owner, one account sale and two drafts; and 239 head of sheep with one owner, one account sale, and two draffs; during the month of February you had four single decks, plural ownerships, mixed No. 2 with 25 head of cattle, with 14 owners, 14 account sales and 22 drafts; the cars also contained 24 head of calves, eight owners, eight account sales and four drafts; 215 head of hogs with nine owners, nine account sales, and ten drafts. Do you believe that that is illustrative of the number of account sales, owners and drafts that you are required to sell your livestock in for the account——

A. Yes, I do.

We find that we work constantly during the market hours of the day to dispose of the cattle that are consigned to us for sale; that is the big end of the time. There is sometimes that it is easy that you do not take all day on a slow, draggy market; you can be there from morning until closing time.

It would be pretty hard to tell all the different kind of market days in 1932. We had many different kinds of days.

[fol. 1268] I could remember the kind of a market that we had on some days if I had the bills in front of me to refresh my memory that something happened would bring it all back to me. I could not take any day, and tell you the market, whether it was fast or slow, or steady or otherwise on any of the class of butcher stuff that I may have sold on that day during 1932. I could not take the vast amount of sales that I have made and be able to tell now the number of hours that were required in handling any of the consignments.

Before the Stock Yards Company enlarged the chutes, we had about twenty pens for butcher stuff. They are using about half of them, they are using part of the pens in the back alley for cattle off the trucks. We have got more room down in the steer alley and have to use many of these steer pens for butcher cattle now.

As to the time of receipts of cattle arriving at the yards, both rail and truck shipments, drag out through the day. That necessitates our receiving cattle into the alleys and remaining until the market closes, in an attempt to dispose of late arrivals. The late arrivals will take you out to the yards again if you have gone to the house anyway.

Q. The record in this case, Mr. Peterson, indicates that your firm sold, of all kinds of arrivals by truck or by rail, large and small consignments, reduced, in the case of truck business, to a carload equivalent, taking a certain number of cattle that arrived by truck and dividing that by the number of cattle which your firm received in each average carload and thereby reaching an average of a carload by truck and using that basis, Peterson and Turnbull sold an aver- [fol. 1269] age throughout the year of 329 carloads of cattle and calves, as against an average for the entire market of salesmen, cattle and calves, 394, and that includes the firms that you clear as well; do you find that on the market days in 1932, as you now recall, that you were busy selling butcher stuff most of the market hours on most of the days or not?

A. Why, yes, I would say we were, on most of the days.

Cross-examination:

Most of our shipments originate in Montana, the Dakotas, North and South Dakota, and Iowa, Minnesota, Illinois and Indiana. I would state that probably the Illinois trade

was possibly the largest. Our receipts of cattle as a general thing are heaviest the first four months of the year. I could not tell what proportion of our receipts were received in the first four months of the year.

I cannot tell the largest number of cattle that we have received in a single day during the present calendar year 1933. Most of the time we sell the cattle we receive on the day of arrival. Once in a while we get in a place where we cannot. I would not undertake to tell you how many days we have carried over livestock during the calendar year of 1933. I am not going to make a guess at it with respect to 1932. It happens quite often. They get the cattle sold on a fast market most of the time, it has been very slow and draggy ever since the first of the year, day in and day out. I cannot tell you how many days we carried cattle over during the month of July of this year. I think I carried over three heifers last week, but do not know the receipts for the week. I would have to go to the books for that.

[fol. 1270] Mr. Donahue actually sells all the hogs that our firm handles on behalf of these parties that we clear. He has bought some hogs for them. He has bought whatever was bought in the last ten years.

I cannot answer that in our judgment our firm could sell more live stock than we are now selling if we received them.

There are four busy days in the week and Friday you have to get through by noon, because you would not have anybody to sell anything to after twelve o'clock.

Q. It appears from some records that on June 4 and 5th, you received one car of cattle and two cars of hogs. That does not include trucked stuff. In your judgment, how long a time was actually required or would be required to sell the one carload of cattle and the two cars of hogs?

A. I could not answer it. I answered long ago that I could not answer it.

Mr. Miles (continuing): The record shows also that on June 7th you received seven loads of cattle, do you recall whether all seven loads were sold on that day?

A. I could not tell you. I would have to go to the records. I did not bring any of those with me.

Q. And you could not approximate the time required to sell them?

A. No, sir.

Q. Could you approximate the time required to sell seven loads on a fast market?

A. Not if a man had a conscience, no, he couldn't.

[fol. 1271] Q. Mr. Peterson, in your judgment, is it any more difficult, does it require any more time today to sell a straight carload of steers which require no sorting than it did five or ten years ago?

A. That cannot be answered.

I would say that it should not take any longer to sell a truck load of cattle than a carload, if there was no sorting on them.

Mr. Peterson returned to the stand with the account sales for his firm for the month of June.

The five loads on June 7th that you asked me about. Our account sales show that there were seven cars of cattle and calves, four consignments, and 177 head. Then, there were eighteen consignments by truck, and 48 head. The total was 225 head with 56 drafts. I also have with me the scale tickets covering the transactions. Mr. Steward and I sold all of the cattle and Beringer sold the calves. Steward sold 47 of the cattle and I sold the balance.

Redirect examination:

Covering 118 head sold by Mr. Steward, there were thirteen sales. I sold the balance of 105 head. It required 43 sales for me to sell the 105 head. The calves were all sold to one buyer. I sold Swift account of Hammond cattle covered by five scale tickets; Siegel Weller, three tickets; Foster, two; H. Hatch, one; Howard, one; Krushbaum, one; M. Livingston, two; Eddie Monarque, two; Wilson buyer ten; C. Correll, two; Libby McNeil and Libby, three; Murray, one; and Huffaker, one; and the United Dressed Beef, [fol. 1272] one bunch. I can only remember the number of buyers that we showed those cattle to that did not buy them, and the bids made on them, only in this way; that Armour and Swift buyers all had a chance to buy these cows that Wilson bought. Swift only bought those few Hammond cows and a few Swift cows. Wilson never had a chance on them, they were sold before he had a chance, but Armour bid on all of them and did not buy any of them, and I had speculators, I don't know how many. I sold a few to Correll

and a few to Monarque. On the cattle that Wilson got, why, Armour and Swift were both on them before Wilson was. The only unusual thing about that day was the fact that we had a large number of consignments that sold together instead of having to break them up in little pieces; there were 37 in one, and 27 in another and 45 in another. It is one of the unusual things, might have had ordinarily 47 cattle, you would have to break them up ordinarily, but they were uniform and all of one type, a fancy little bunch of yearlings topped the market that day for their weights, light weights. That was the hottest day we have had this summer. The cattle died all over the yards and that afternoon Armour lost twenty some odd; Swift lost 29 after they were weighed, Wilson lost some, pretty near everybody lost some. The fills were large. There were not any cattle started toward the scale before 12 o'clock that day on account of the fill and they were waiting and waiting, and when they moved them they lost so many of them, got them hotter than ever.

[fol. 1273] Recross-examination:

June 7th was a fairly active market when they started, but they did not begin until around noontime. They were waiting for the water fill to get out of the cattle, and just sitting around, did not do anything. It did not take long to sell them after they commenced to go.

Mr. Arthur L. Donehue, a witness called by the Respondents, testified as follows:

Direct examination:

I am a hog salesman for Peterson, Turnbull and I live in Chicago and have been selling hogs approximately fifteen years. I worked for Bacon Dawson and Company, predecessors of Peterson, Turnbull and have been working there ever since. I started out as yardman, stenographer and bookkeeper. I sell all the hogs that are consigned to Peterson, Turnbull if I am in the yards. I also sell the hogs of Charlie Moberly and Company and Steward and McIlhaney. Our whole business comes from Illinois, Iowa, Wisconsin, Indiana. We get our business in Illinois within a radius

of 200 miles, mostly from down toward Bloomington and Granville and that country.

I went out to solicit business once last year. I went down in the vicinity of Bloomington, Illinois, I was gone four days.

[fol. 1274] This year I have been out soliciting once or twice, and that would be only for a day. I would go to attend a funeral and would register out in case I ran into any of our customers. I have no help in selling hogs. I have a boy up there that helps yard, and if I am absent from here, Lyman Keyes sells my hogs. Lyman Keyes sells all the hogs that are consigned to him when he is there; when he is not there I sell his; we work together that way.

The bulk of our hog business is sold in lots less than a carload. The sales run from one head up. I do not recall the hog business that I sold last year, was actually sold, the number of drafts that were necessary to dispose of the business. I don't remember the number of straight carload sales I had that did not require any sorting. I cannot recall the condition of the market on the various days of last year. I cannot recall the kind of market that we had this year with reference to any particular day without going back and looking up the record. I can remember the market this week, and I could last week, I think I could. Last year we had all kinds of markets, ups and downs, slows and fast, different days. It does not always follow that our business transactions are made in the manner that the consensus of opinion was or is for a particular day.

[fol. 1275] Mr. E. L. Vaughan, a witness called by the Respondents, testified as follows:

Direct examination:

I am president of McCausland Hoag and Vaughan, a corporation organized under the laws of the State of Illinois, and am one of the principal stockholders. I own all but ten shares. I assume the general management of the firm, and sell cattle, confining my activities principally to steers and yearlings. We have three cattle salesmen besides myself. They are James A. Bell. F. W. Sullivan and

J. A. Goble. Mr. Goble has been selling for us since January, 1933. In 1932 the cattle were sold by Mr. Goble, Mr. Bell and myself. Mr. Bell is one of my assistants. He is employed on an annual ba-is and assists in selling cattle. The reason for employing an additional cattle salesman in 1933 was to cope with existing conditions, the change in the business, when it took more help, and I was compelled to employ him to protect myself and my firm. Off hand I would say that our business is not as large as in 1932. I think we are getting a smaller number of head to sell than the first six months of last year, but notwithstanding that fact, we had to take on an additional salesman.

I have been selling cattle on the Chicago market twenty-eight years. Before coming to Chicago I was connected with a livestock commission house in Kansas City for five [fol. 1276] years, two years at St. Joseph, and since 1900 have been in Chicago. I sold cattle on the St. Joe market but not on the Kansas City market. I was pretty young at that time. We sell cattle from all parts of the country where cattle are fattened for market, and I would say Illinois leads in the number of head that we sell. We receive cattle for sale from most western states; and southwestern states.

I account for the fact that during the month of April, 1932, our commissions, gross for selling were $6,500, for May $3,800, June $3,300, and in September, $4,000, from the fact that while my firm is not the largest firm, we have some of the largest cattle accounts coming to Chicago and it was during those months where a larger gross commission is shown that we received cattle from these large operators who market them in the spring.

Off hand I would say, "no" I am not familiar with these statistics prepared by the Government made from an analysis of the account sales of our company.

Q. The work sheets for your firm, which are a part of Government Exhibit 16, indicate that during the month of April, which was the month in which you had the largest gross commissions for 1932, you received 236 cars of cattle in straight cars, single ownership, amounting to 6068 head from 124 owners with 424 drafts, or approximately 15 head [fol. 1277] to the draft. Now, during the same month of April, you had 609 head of cattle that were driven in owned by 116 people with 230 drafts or less than 3 head per draft.

Now during the month of May, you had 135 carloads with 3,489 head, single ownership, from 74 owners with 266 drafts, and in the same month, you had 235 head of cattle which were driven in with 58 owners and 121 drafts, or about 2 head to the draft. During the month of June, you had 1,897 head by rail in 73 cars with 43 owners and 222 drafts. In the month of June, you had less than one-third of the number of cattle by rail that you had in the month of April. In the month of June, you had 680 drive-in cattle with 194 drafts from 92 owners, a little more than 3 head to the draft and nearly three times as many as you had driven in the previous month. During the month of March, you had 5 single deck cars, Mixed No. 2, which includes cattle, calves, hogs and sheep, but does not include cattle and calves only, and those five cars contained 47 head of cattle from one owner requiring 23 drafts, a little over 2 head to the draft. You had also in that same 5 cars 39 head of calves from one owner, necessitating 10 drafts, or 4 head to the draft; you had 265 head of hogs from two owners, requiring 17 drafts, you had 8 head of sheep from one owner sold in two drafts. During the month of June, you had 8 carloads, mixed No. 2, containing 168 head of cattle from two owners, necessitating 36 drafts; also 32 head of calves from one owner, necessitating 15 drafts; 224 head of hogs with two owners, necessitating 20 drafts. During the month of July, you had 9 cars of Mixed No. 2, mixed by rail, containing 78 head of cattle from two owners, necessitating 14 drafts; 34 head of calves from two owners, with the same number of drafts, 14; 239 head of hogs from two owners, requiring 33 drafts; 225 head of sheep from two owners, necessitating 19 drafts. Are the conditions, as reflected by the varying ways in which your business arrives as indicated from the figures just read to you, the reason for the necessity of taking on, or one of the rea-ons for the necessity of taking on an additional salesman?

A. You are correct.

[fol. 1278] Q. Have you found that the business, as it comes to your firm, requires a greater number of drafts which represent individual sales to dispose of the same number of livestock than it did several years ago?

A. It does.

That condition was brought about as far as our business was concerned, I can express it this way: we used to con-

sider that we did a wholesale business, but, we are down on a retail business. The cattle have to be sorted in various ways to put them in proper market condition or shape, and we have to show them to many different buyers and it takes much longer to effect sales, that is, sales that we consider the true market.

Q. Do you think that the business which you received in cattle during the year 1932 represented the full limit of the capacity of you and your assistants to sell cattle at their market value as confronted by you throughout that year?

A. I considered that my expenses are reduced and employ no lost motion and only take on men where I find it absolutely necessary for the proper conduct of my business.

Q. During the year 1932, the cattle salesmen with your concern, including yourself, sold 709 cars per salesman on the average. You have no way of knowing now the number of cattle that you sold or the number of cattle that any other of those salesmen sold throughout the year?

A. Well, I sell the bulk of them, but the records will show that proportion. I have not those figures at hand.

Q. Is there any record that you know of which would reflect the exact number of cattle that you sell or the exact number that other salesmen sell? The work papers do not contain them.

A. No, we work together, my assistant sells some of them under my supervision and we sort the cattle together and [fol. 1279] I help out, selling the cow stuff at times, and there is no record kept of the exact number of species or head that I sell, personally, or any other man that is with me.

Q. Have you found that during the first six months of this year that, with the additional help, you are able to perform your duties any better than you did with three salesmen last year?

A. I certainly do, or I would not employ the extra help.

Q. You figure that you and the other three salesmen are using as much time in the disposition of the receipts this year as you and the two other salesmen used in disposing of them last year?

A. Yes, sir.

Q. On the basis of your last year's receipts, using four salesmen, your average would be 532, dividing the receipts by four instead of by three, as against a market average for

all agencies on the market of 394 carloads on the average.

A. I think that would be correct.

Q. Do you have, among your patrons, a class of shippers that ship considerable quantities of straight cars, necessitating a fewer number of drafts when that class of business is moving?

A. I can recite one customer who markets 6,000 cattle a year. His cattle are usually weighed in from one to two bunches, but if these cattle come in each day, there is no single load or bunch that comes in but what have to be sorted and put in packages suitable for the trade.

Q. But, the class of shippers that are feeding the number of cattle that you speak of are very rare who market their cattle on this market?

A. Very, very few.

Q. So that you have to maintain a firm, in order to dispose of the job lots, into which you have to grade your receipts from day to day?

A. I do.

[fol. 1280] Q. Is that illustrated by the fact that during the month of May, where you had 6,098 cattle, as I recall the figures, with 424 drafts, or 15 head to the draft, is that the kind of business you would refer to?

A. That was the month that one of my large shippers was marketing the most of his cattle, and they were weighed virtually in loads or two loads or three loads.

Q. Can that kind of business, in your judgment, serve as a criterion for the number of carloads of livestock that a salesman ought to be expected to sell on this market from month to month or from day to day?

A. It cannot.

I do not employ our salesmen on the basis of the number of carloads of cattle that they can sell in a day, or a month, or a year. I hire them by the year. My first requirement as to the qualification of a salesman that I employ; he must be experienced, having many years of experience, and be well known as to trading ability, honesty and to hustle. I do not expect those salesmen to sell, when I make a contract with them, any particular volume or volume of carloads. They are hired for the work that they can handle.

I do not believe that a carload as such is a proper basis for arriving at the amount of work that a salesman ought to do; there are no two cars alike and you can sell no two

cars alike. There might be the same price, but you have got to get different buyers, and sort your cattle.

A scale ticket represents one individual sale but it might be the efforts of three or four salesmen. Three or four salesmen may work on the same draft. As to what I think more nearly represents a proper distribution of time de- [fol. 1281] voted in sales effort, carloads sold or drafts disposed of; I don't think you can make a distinction there because sometimes a carload can be sold readily and sometimes it takes longer to sell a carload than it would eight or ten smaller bunches, and it could also be true that it would take maybe eight times as long to sell eight smaller bunches than it would to sell one. The market conditions, including the demand, governs that situation.

If I were choosing one or the other as indicative of the effort that we put forth from time to time, I would say that the scale tickets and the number of those scale tickets, which indicates the number of drafts, more nearly represents the time used in selling than the number of carloads in which they arrive.

I am familiar with the view of the shipper who ships me some five or six thousand cattle with reference to the charges which I collect. I have discussed that question with him. He feels that it is a reasonable charge, and I have never had one kick from these various large shippers relative to the commission we charge.

On the large consignments, we usually know they are coming from the fact that the people telephone us or write us, and on the smaller mixed stuff, cows, what we call mixed carloads, we don't receive so much advice in advance. They drop in any time they feel like shipping. Taking a line through our general receipts, our business runs more to [fol. 1282] steers and yearlings than the lower grade of livestock. They vary from day to day and from month to month, and our truck business varies from day to day and from month to month. Some days we will have large rail receipts and a proportionately small run of truck arrivals. Perhaps the next day or the next week we will have the reverse condition.

As to whether there is any way I can bring about a more orderly condition of receipts to enable me to more evenly divide our efforts as salesmen on the market, I can only speak for my firm. I learn the estimated receipts and if

the receipts look large, I certainly try to have the people with the big shipments on hand check their big shipments and possibly send in two to four loads or none at all. I do that to protect them on the market and also to, as far as I can, protect the general market from heavier receipts, which would work against the shippers. But notwithstanding that fact and the efforts I put forth in that direction, it is not possible to operate it and serve the people that we serve and bring about a condition which will produce a profit each month of the year. There are positively months, June to October in which the expense will exceed the income and that has been true covering my entire experience in the commission business. It cannot be overcome; I am compelled to maintain that force which will enable me to efficiently dispose of livestock which we receive during the period of our largest receipts, and in order to do that, there [fol. 1283] is some time in the light seasons when receipts are low in which there may be some time which is not as fully devoted to the sale of livestock as during the period of heavy receipts. It is impossible to do otherwise.

J. A. Bell has full charge of the butcher stock department which includes cows, calves and bulls; and the two men working with me, steer salesmen show the cattle under my supervision, show some particular bunch of cattle suitable to some particular buyer at a time when I am working on other cattle, and our time is taken up working together all the time. We have cattle on the market, and in addition to this, each and every one of us sort cattle, put them in proper shape to appeal to the buyers.

$46.50 represents the entire expenditure of our company for travel and solicitation during the year 1932. I did the soliciting, the road work myself, and for the reason that I had no one else to do it and my purpose this year, in 1933, in hiring another man, was to do that work for me. I found that other firms were doing it and I was compelled to do so myself for my own protection. We spent about $600 less in 1932 than in 1931 for advertising, which includes market papers, circulars, postage, specialties and novelties. During the year 1932 I cut down on my advertising, such as circulars, postage, whereas the year before, I think the books [fol. 1284] will show that we sent a circular nearly every week, and, we did not do so in 1932, and also cut down on the Drovers Journal which is a market paper. I found it

necessary in managing the business of our corporation to reduce the salaries of non-owners from 1931 to 1932. The business did not justify the salary I was paying them and I cut them down. I mean the net results of our operations did not justify the salaries paid in 1931. I tried hard enough to reduce the rent, light and heat, but I could not do it; I was on the committee and tried to get them reduced and we got thrown out so we could not reduce it. We spent less for stationery, printing and supplies in 1932 than in 1931. I do not sell cattle on horseback. The item of "Horse and Saddle" of $90.00 in 1932 covers the time I was buying stockers and feeders and it was quite a way up to the feeder alley and I used a horse during that time, during several months that I was buying stockers and feeders. As to whether I find it of advantage to sell cattle on foot rather than on horseback, as far as my business is concerned, I was saving $530 a year by footing and I like it pretty well on foot. I started to sell cattle on foot about ten years ago.

Cross-examination:

Mr. Quinn is secretary. He holds five shares of stock in my company. James A. Bell is in charge of the butcher [fol. 1285] alley department. He has five shares in the corporation. Mr. Bell sells cows, calves and bulls. Two other salesmen and I at the present time handle steers and yearlings, which includes yearling heifers. I stated all three of us work together. I might be showing a load of cattle in one end of the alley to some packer buyer and I would see a shipper coming along who might have an order for a particular load of cattle in the other end of the alley and rather than let him get by and get away from us I would sic the other man on him and make him show the other cattle.

They get the best bid and they usually consult me before they sell them.

Mr. Sullivan was an order buyer for various packers fifteen or twenty years ago; he speculated some; and some five or six years ago, he entered my employ and after being there a couple of years another firm bid for his services and he went with them for three or four years and he came back to me the first of the year, in 1933. In other words, I hired him back. I do not assign him any livestock to sell, he just works with me. In addition to his services, as sell-

ing, I found it necessary to employ him to make trips to the country where it is impossible for me to do it. I cannot leave my alley full of cattle and go to the country and look at cattle or solicit business. And I am not now relying on him chiefly to do that soliciting.

[fol. 1286] Mr. Bell and Mr. Goble very seldom make trips to solicit. Mr. Goble makes various trips to the country. Mr. Bell very seldom does. Mr. Goble confines his trips principally to his home town and vicinity. He has been with me, I think, five years. His experience in the commission business has covered possibly forty years. Before going with me, he was in business for himself. He has some following of his own, I don't know how much. The books would show. I pay him salary and one-half commission. I mean by "one-half commission" on the business that he gets; it comes from his immediate territory where we know it is his. The large operators who are customers of our firm, are my friends exclusively. I don't hesitate to name them. The Midwest Canning Corporation, a branch of the California Packing Company, average 6000 cattle a year. H. K. Funderburg of Belvidere, Illinois, marketing an average of 2500 cattle a year; the Aetna Insurance Company market on an average of 1200 to 1500 cattle a year. H. K. Wooten of Chickasha, Oklahoma, markets from 9000 to 22000 cattle a year. Of course all the Oklahoma cattle do not come here, but a large part of them do. I get practically all the cattle from these people other than the Oklahoma concern, with a few exceptions, a load or two occasionally goes around. The Aetna Insurance Company cattle [fol. 1287] that are located in Ohio, go to an eastern market, but the Indiana and Illinois cattle come to Chicago which comprises the bulk of their entire feeding. They absolutely come to our firm when they come to Chicago. I have had the Aetna Insurance Company business for three years; Funderburg for fifteen, Wooten for ten years. These customers which I have mentioned do not send their livestock in at about the same time of the year. They market at different seasons of the year. These customers market their livestock through my advice and consulting with them, there is none of them that ship large bunches at any particular time. As to their maximum, depending on the market, anywhere from two to four or six cars a day.

On the canner cattle, that is, the canner cattle first men-

tioned, they were shipped in in bulk; all of them have to be sorted and sized. They go right out and cut them off and ship in four to six cars or two cars. The Funderburg cattle all have to be sorted and practically all the Oklahomas.

When a buyer comes into my alley, as in all other alleys, we ask him what he wants and he tells us and we aim to show him the particular load or bunch of cattle that he is interested in, and it is not necessary to show him something that we know he won't buy because of disturbing the cattle and shrinking them. If we are showing a buyer a particular class of cattle, it is courtesy to him to show him all of them of the class he is interested in before we show [fol. 1288] them to anybody else. If another buyer who is interested in that class should come along, we would require him to wait until the other buyer left; in common courtesy to the buyer in the pen, this buyer would not attempt to come into your alley. He would not want you to know he was interested in those particular cattle and he would make a bluff and ride on. Under those conditions, two salesmen would not be working on the same grade or class at the same time.

Q. Mr. Boyd quoted to you, quite at length, certain figures from the work papers covering the receipts in your firm and asked you whether the variations in those figures required you to employ another salesman. Now, just what were the conditions as represented by those figures which make necessary the employment of another salesman?

A. Well, I have been in the business a great many years, and I aim to keep pace with the times. Competition is strong and I have to deliver as good as anyone else, and, under the present manner of buying cattle, a man is only physically able to do so much, and I am pretty strong at that, but I could not do it all myself and do justice to my patrons.

Q. What is the value of your soliciting?

A. The value of the soliciting?

Q. Yes.

A. Well, customers have a bunch of cattle on hand like some of these various large operators and they call you upon the phone or write you to come out and look at their holdings and you go out and look them over. Then, the question with them is that you use your best judgment in

getting them on the best market, the kind of cattle to ship on particular days, and, after we have looked at those cattle, we have them in mind pretty well, but if the market justifies two or four loads of any particular kind, we aim to have [fol. 1289] them, have them here, at all times keeping in mind that receipts will cause us to cut down or advise shipping a few more at different times.

Q. Are you ever able to take care of that situation by telephone or by letter?

A. You cannot unless you see the cattle; you have to know the class of cattle they have and know all about them.

Q. How did you manage that during 1932 when your soliciting trips were cut down.

A. Well, I ran out a little on Sunday, ran out here and put in extra hours and did the best I could.

Q. Do any other firms on the Chicago market receive any of the Oklahoma cattle which you mentioned?

A. Yes, there are various firms receive Oklahoma cattle.

Q. From the same people that you receive those?

A. Yes, and I will tell you right here that I consider the man shipping to me. That Oklahoma cattle this year was too big for one firm to handle and, therefore, I advised him and was the cause of him splitting some of those cattle with my competitors, because I was looking after his interest and I know I could not handle all these cattle in one place to his advantage. That is a matter of record.

Q. And you divided the business up with some other firm here?

A. No, sir, I got him to ship to some other firms, but they got the full benefit, I got no benefit whatever.

Q. And, under those circumstances, do you designate the firm?

A. I did, but I am not noising it around because they are all good friends of mine, but I had him ship to what I thought were pretty good fellows.

Q. I believe you said you sell the bulk of the cattle of your firm?

A. Yes, sir.

[fol. 1290] Q. Do you know what proportion of the cattle you receive you would sell?

A. The proportion of the cattle he shipped from Oklahoma to Chicago.

Q. No, the cattle received by your firm that you personally sell, all the cattle.

A. I cannot tell you just what proportion I sell but it is practically the bulk of them.

I had the same people during 1932, with the exception of Mr. Sullivan, who came with me January 1, 1933. And have dismissed no employees. Have made no reductions in salaries in 1933. I have not made any material reductions in any items of expense. I figure night and day on it and I cannot see where I can cut any expense any place.

Mr. Henry Schroeder, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 7841 Clyde Avenue, Chicago. I own the Schroeder Live Stock Commission Company. I have been in business for myself, this is the tenth year. Before I started in business for myself, I was with the Central Live Stock Commission Company, but I have been with a few different firms. I have been selling cattle for twenty-five years. I used to be in the butcher business and also bought livestock and shipped them to market and fed cattle in the State of Iowa.

[fol. 1291] A. C. Schroeder is my son. He does not sell anything, he helps yard, does the office work, weighs, whatever there is to do. C. E. Hanley sells the butcher stuff; and R. B. Ryan sells hogs; E. Shaughnessy is the second man in the hog house. C. Waldron is the stenographer, helps on the books, and whatever there is to do in the line of office work.

I sell the steers. Hanley and I do the buying when we buy on order. When I started to sell cattle, I started on butcher stuff the first year or two I was here. Since that time I have sold steers.

We had no salary reductions in 1932 that I remember. Our business comes from different states, Iowa, Illinois, Wisconsin, some from Indiana but not a great deal. Most of the cattle business comes from Iowa. Our truck business is not as big as rail business. I don't think the truck

business has increased in comparison to the rail business. Ryan, my son and myself did the soliciting for the firm. My business was profitable in 1932. I do not know if I am making a profit this year for the first six months.

We clear the Nalley Commission Company. Mr. Nalley helps me selling steers, we do all his office work, sell his butcher stuff, but he also helps us yard and weigh and helps me sell steers, he and I work together. We sell his hogs. He pays us 35 per cent of his gross commissions. He puts [fol. 1292] in full time in the alleys; no one else works for him. The business is consigned Nalley Livestock Commission Company. Our business is consigned Schroeder Livestock Commission Company. If the records show that we handled 157 cars of cattle per salesman, including Mr. Nalley as a salesman, it must be.

Q. I am telling you that you had 17 cars of cattle during the month of March, 1932, there were 451 head in those cars necessitating 76 drafts. During the following month you had 10½ cars in single ownership, with 276 head, necessitating 49 drafts, that would be about a little over five—five and one-half head to the draft; and in May you had 17 cars with 442 cattle from 15 owners in 62 drafts, that would be about seven head to the draft; and in June you had five cars, 125 head with 14 drafts, about nine head to the draft. That was single ownership business in carloads. In January of 1932 you had 44 truck cattle with 25 drafts; and in February you had 26 truck cattle that you sold in 19 drafts; during the month of August you had six single decks and seven double decks; during that month in mixed cars that had cattle, calves, hogs and sheep in them, there were 44 head of cattle with 37 owners and 35 drafts; you had 202 head of calves with 81 owners and 21 drafts; you had 830 head of hogs with 87 account sales and 82 drafts; during that same month in those cars there were also contained 103 head with 14 owners and 19 drafts. The total commission for that month on that class of business was $734.65. Do you know how you would sell 202 calves in mixed carlots that belonged to 81 owners in only 21 drafts?

A. Well, they were weighed together and prorated, you see. That is what some concerns want us to do.

Q. During September, you had 7 single decks and 3 double decks that contained mixed cattle and calves, hogs

and sheep; you had 82 head of cattle belonging to 35 owners with 67 drafts; you had 57 calves belonging to 26 owners, 36 account sales and 18 drafts; you had 582 hogs, 38 [fol. 1293] owners, 37 account sales and 52 drafts; you had 21 head of sheep belonging to four owners, six account sales and five drafts. Did you handle last year a considerable number of co-operative shipments from co-operative shipping associations?

A. Yes, sir.

In handling some of that business, we are able to weigh animals together and pro-rate them where we have home weights. We sure have a very considerable number of drafts for the number of animals handled. That business has not been increasing over the past several years. Not the last year or so. Our business would be lighter this year. As to the number of drafts we had to make to sell the same number of cattle, it would be handled the same way. There would not be much difference, would not be any difference. We sort the cattle in order to sell them. We do not make any more sorts than necessary. Our average was 157 carloads of cattle per salesman, including butcher stuff. I found that on most market days we were busy selling this mixed stuff, as it was read to me, requiring a large number of sales to dispose of the number of animals handled.

I get down here on a Monday morning at six o'clock. Other mornings about seven, that is myself; the boys, of course get out earlier. It is hard to tell how late our force works; we work until we get through; sometimes it is late and sometimes we get through in good season. I would [fol. 1294] call in "good season" on a short day, excepting Saturday, when we get through around four or five o'clock. When we have a late day we have to work as late as eleven o'clock on a lot of those drafts you are talking about to prorate. The greater the mixtures, the greater the number of drafts, the longer it takes to handle the work in the yards as well as the work in the office.

We get our hog business from Iowa, Minnesota, Wisconsin and Indiana.

Direct buying of hogs by packers has had an influence on the amount of business which we have done in the last five years. It has cut us down considerably in Iowa and Illinois. I am personally acquainted with most of the ship-

pers, who have been regular patrons of the Schroeder Commission Company or the predecessors of that company who have since shipped hogs direct to packing plants. They give as a reason for shipping direct, that they claim they can do better shipping direct. I have attempted to convince them by solicitation that it is not true where I believe such to be the case, and have been able some to convince those shippers that it would be profitable to them to ship to us. Some of them have made money by shipping to Chicago and some of them would have made money shipping direct.

[fol. 1295] Cross-examination:

We get thirty-five per cent on sheep consignments to Nalley. The fellow who sells our sheep sells his. I think he gets half, that is what most of them that handle these sheep get. He gets half of the regular commission, and I get 35 per cent of Nalley's commission. Mr. Nalley helps me sell cattle. He works with me on the steers. I help him in selling cattle consigned to his firm. I don't know how much of his time is devoted to selling cattle for me. I could not say what part of my time is devoted to selling cattle for Nalley. Yes, Nalley does work full time selling cattle for our firm. We work together.

I am actually the manager of our firm. I do anything that comes along that has to be done. Sometimes I have to leave the cattle alley and run down to the hog alley; it depends on what comes up. I could not tell you what per cent of our total receipts of cattle would be steers. I don't know whether they would be one-half steers. I never looked into that. I don't know. I could not tell who sells the greatest part of the cattle, including the Nalley shipments. I don't know whether I sell more than any of the other two salesmen. I have one hog salesman. He has a yardman to assist him.

As to what extent direct buying by the packers has cut down our receipts, I don't know. I know it is plenty.

[fol. 1296] Q. In your opinion, do you render as efficient service to the shipper who ships to you as other commission men on these yards render to their shippers?

A. I don't get that.

(Whereupon the question was read.)

A. Do I render?

Q. As good service.

A. I sure do.

Q. You feel that your salesmen and that you are as effcient as the other salesmen on the yards:

A. I sure do.

Q. Do you believe that your firm could have sold more cattle and more hogs last year if you had received them than you actually did sell?

A. Well, there are days we could handle more, yes.

Q. How many days?

A. That, I could not tell you.

Q. How many more do you believe you could have handled?

A. That is hard for me to say.

Q. Do you know the greatest number of carloads of hogs that your firm received in a single day for the year 1933?

A. No, I do not.

Q. Do you know the greatest number of carlots that your firm received or that your firm, plus Mr. Nalley's firm, received in a single week during the year 1933?

A. No, I don't remember.

[fol. 1297] Mr. E. L. Vaughan, a witness called by the Respondents, was recalled to the stand and testified as follows:

It is one of the conditions of the loans to the farmers that the livestock be sent to you when sold. We have to discount quite a lot of loans, could not carry them all. The rate we charge is seven per cent, and where we have to rediscount them, the bank takes that at six to six and one-half. We practically make no money on rediscounts out of the interest. The mortgage on the livestock and feed is the only security that we have. The livestock is not insured in any way.

I recall on direct examination that some figures were read to me showing the variation in the receipts from month to month and it was disclosed that the month of

May was our heavy month. That is the month during which we received most, or at least a large part of the cattle from these large operators. I stated that in my opinion the month of May would not be a fair criterion of what our sales force could do. I don't quite understand the question, other than these large shipments coming, it does not require quite as much work, but it necessitates the full force, full blast, all the time; and other months, while we might not have as much business, it might be more difficult to handle and require considerably more effort. As to [fol. 1298] what would be a fair criterion of what our sales force is capable of doing as far as the volume of business handled is concerned, it depends altogether on the class of business and the conditions of the market from day to day. The condition of the market affects it very materially. The packers employ specialists to buy cattle and they come out nearly every day, trying to buy them lower. The salesmen resist this and we cannot sell cattle one time in twenty to the first man who bids on it, because he will bid you lower and that is where salesmanship comes in, to resist that by holding up the market and positively refusing to sell them until they wear us or we wear them out, and we win out as many times as they do and that, in a measure, maintains a market, and that is why we have to work so hard on cattle on different days and on different classes. The amount of resistance which our sales force puts up does not depend on the number of head or the volume which they have to handle. They might try to buy a single animal for fifty cents less per hundred than it is worth, and they also might pursue the same tactics on loads or two loads. When the packers pursue their bearish tactics that they usually do, and on days when receipts are rather heavy, they positively refuse to buy cattle early in the morning, regardless of how many times you show them to them unless you will make concessions, and, therefore, we refuse to do that and hold these cattle up and try to force the market on a steady basis, or try to [fol. 1299] get higher if we can. We usually try to make a clearance but there are days when we know they are bidding at less than the cattle are worth and we positively refuse to sell them. During the past year, it was quite a frequent occurrence. You might have to go over with a load or you might have to go over with ten loads. As to

whether we carry many of them over longer than one day; I can recite a case we had last Friday; three loads of cattle; we showed them Friday; we showed them Monday and we showed them Tuesday and we shipped them to Lancaster, Pennsylvania and Baltimore. They were low-priced cattle, two loads of them were low-priced cattle and one load was a medium load of cattle. There was a demand here, if you would take their price, but they were not bidding what these cattle were worth. We occasionally forward cattle like that. It doesn't happen to us only three or four times a year.

I have had considerable experience on the other markets in the early days and during the course of a year's business, I handled hundreds of cars of cattle that were bought on river markets and shipped to Chicago or which have been forwarded from river markets to Chicago. There are quite a good many cattle forwarded out of the river markets to Chicago. We very seldom carry over any cattle from one week to another.

[fol. 1300] As to what I meant in answer to a question by Mr. Boyd, that I hire our salesmen on the basis of what they can deliver; I have never hired a salesman because he controls business, but because he could take care of and handle my business in a manner which pleased me and my customers. I pay him a salary for his ability.

As to how I do arrive at the salary which I pay a salesman; well, competition is strong, like the packers, they hire the very best buyers after years of experience, and, in the commission business, I am compelled to hire just as good a man as I can find at as low as I can, and, of course, I cannot hire him any cheaper than anyone else. I absolutey would not hire a cheap man or a man who is not known as a high class man and a judge of cattle and a trader at any price. When I say "known as a good salesman" I mean on the market, to cope with the packers.

Q. But would you hire a man to sell cattle for you irrespective of his capacity to handle cattle?

A. You mean by that, you ask me if I would hire a man to sell cattle if he was not a cattle man?

Q. No, he may be a good judge of cattle but assume that he has a very low capacity in selling.

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A. I would hire no man unless he was known to have ability and a first class man.

Q. Well, do you regard his capacity to handle livestock and sell livestock a part of his ability as a salesman?

A. Absolutely; he must be a judge of the market, of [fol. 1301] values, and equally as good traders as the packers send against him through their buyers.

Q. And, by "capacity" I mean the volume which he can handle.

A. Not the volume; he could lose a customer on one car of cattle and he could lose a dozen customers on a dozen different loads.

Q. You think, then, that the volume that he handles or sells for you would not, in any way, affect his ability as far as getting the proper price is concerned?

A. Well, by "ability" I mean that he should be able to cope with small receipts and heavy receipts.

Q. But would not his capacity to handle volume be a factor as far as his profitableness to you is concerned, all other things being equal?

A. No, sir.

Q. Would you regard a salesman who could handle only a car a week as a profitable man to you?

A. I would hire no man that could only handle one car a week. I hire a man on an average of what my business has been for years and is at the present time, and I aim to hire him to cope with that volume of business.

Q. You mean you pay him a salary based on about what business you will have for him to handle?

A. No, sir, I pay him a salary practically based on the volume of business I handle and his work would be his proportion or what he could do while he is selling and sorting.

Q. And, if your firm received a greater volume, would you expect him to handle his proportion of it.

A. Yes, sir.

[fol. 1302] Q. Have you ever discharged a salesman, because of unsatisfactory service, either by that or inability to satisfy the customers or by reason of the fact that he could not handle his proportion of the volume?

A. Many of them.

Q. For which reason, either or both?

A. For the simple reason that he could not cope with existing conditions, could not make sales in line with what

my competitors are doing and, therefore, to continue with him I would lose my business.

Q. Did you ever discharge one because he could not handle his proportion of the volume which you expected him to handle?

A. I didn't discharge him because he could not handle his proportion, but I concluded he could not handle any part of it satisfactorily.

When it becomes necessary for me to hire a salesman, I canvass the yards very thoroughly and pick out a man that is known to the trade as being a good man and has been successful. I usually hire him from some other commission firm on the market; that is the only way we can get them. I stated that a scale ticket might represent the effort of three or four salesmen. In explaination of that; I might show these cattle to one buyer and the other salesmen show them to different buyers, or the buyer that bid me on them first might come back and bid these other salesmen on them. It is a known fact that the same buyer might visit you four or five times on the same load of cattle and [fol. 1303] raise his bid from time to time, finding that he could not buy them at what he bid you on them first or second or the third time. That means that any one of the cattle salesmen of our firm might show the same pen of cattle to different buyers. As to whether any of them would close the deal or would the final decision as to the sale be put up to me, in some cases, it might be put up to me, and, in trading, we advise with one another and we are all three conversant as to what different people have bid us on a particular bunch of cattle, and he might not consult me towards the last at the time he made the sale because he knew he was getting more money than I had been bid and that was the price that we were willing to sell them at. Under those conditions one salesman can show the cattle as well as another salesman.

There is a rule of courtesy among commission firms at this market governing the employment of salesmen, and, I, myself, would not attempt to hire some firm's employee or salesman, but, at times, different firms' business drifts away from the large volume, and you might conclude that this man was available, and, under those circumstances, you are at liberty to approach him, or he might approach you. It is very seldom that we approach any man's sales-

man to hire him, but we rather let them come to us. He might have some dissatisfaction with his present firm and have a reason for a change.

[fol. 1304] To a certain extent all of our salesmen including Mr. Goble make trips to the country, to solicit business, I have a way of checking up on solicitation effort to determine whether or not it is profitable; I could check it up; if you send a man out to see any particular man, and he has been your customer before, and you get his business, you have to credit that to the efforts of the man you send out. I have done that to determine the results of solicitation. My own personal experience has been that it takes too much money and it is not very profitable to me.

That effort is not expended to the end that we will get new customers. We get some new customers, but the bulk of our soliciting, if you call it solicitation, which is in the way that I describe it, my way is that, my own experience is that the most of our road work, traveling, is to look over cattle in the feedlots from people who are already customers and demand that we come and look at their cattle and advise with them and keep them posted afterwards on their particular class of cattle.

I think I testified that some one or all of these big operators who are customers of ours feel that the commis-

[fol. 1305] sion charges are reasonable. In fact, I have a letter in my office now from a man for whom I sold 2,800 and some cattle this year, and have sold his cattle for fifteen years, who assured me that he did not ship to me through friendship, but because he felt and knew that my company rendered service that is entirely satisfactory, and he is going to continue on that basis only. He did not state specifically in that letter that he thought the commission charges were reasonable. I have discussed this question with various of them when they are here. It is not very often, but it comes up in a way, and my recollection is that they wanted the service, they don't want cheap service, they are willing to pay and pay more if they got it. I do not recall at this time any one of these customers who has stated to me that he thought the charges were reasonable, not in that light. They always express themselves as "everything was satisfactory." That is, they were satisfied with our services.

Mr. Bell sells butcher stock. His efforts are confined in a different alley from mine. For the reason that he sells

cows, calves and bulls, he has personal charge of that department and he runs it exclusively with the exception of coming and advising with me, and sometimes I will take some stock from his alley up to mine and sometimes I send some back to his, but he has assistance, of course.
[fol. 1306] My firm has made no reductions in salaries in the year of 1933.

I have been unable to make any reduction in any items of expense during 1933 whatever in any salaries or other expenses.

Redirect examination:

Q. So that we are not to understand from your testimony that regardless of increased volume, that you would continue to handle increased volume or increased effort with the same force?

A. I can answer this, that on an average volume of business which we have done in the last four or five years, conditions have changed by reason of trucks, cooperatives and other sources to the extent that I was compelled to put on another man, even though my business had not increased any.

Q. Now, in the specific instance that you stated of requesting one of your large shippers to consign a part of their business to another——

A. Yes, sir.

Q. —indicated what with reference to your ability to get the market price on increased volume?

A. My ability in that case could not be considered because under buying tactics, no man to my way of thinking can handle train loads of cattle or large numbers of cattle, because buyers are not taking them that way, and my reason for requesting this man to split his cattle with other firms was from the fact that I knew that I might be discriminated against by having this number of cattle in my yards and I wanted him to put some of them in another division and by doing that, while I was losing the commission, I left that I was making this man money.

[fol. 1307] I would be very glad to duck the loan part of the business but the banking situation has been such that a good man could not get money and I have favored them more to help them than myself. This past year I have made no loans that I can recall to any man who has not been a

customer to our company for a good many years and his ability as a feeder and his well known honesty was taken into consideration, and I have turned down business from people who would like to ship to us providing we would make the loan. I have refused to loan them money. The rediscount rate is not sufficient or does not afford a sufficient margin for a person to make livestock loans if they do not take into consideration those circumstances that surround my loans.

I attribute a large part of the success of our company to the activities of its stockholders and in the management that I as an owner render to the business. It positively is one of the vital factors in our business. Unless you have the best men that can be employed, you can lose your business, if they cannot cope with existing conditions of competition and against the buyers that the packers send against us. I can conceive of no manner in which present rates are not even more fair now than in 1923, when cattle were selling high, for the simple reason that the work we employ now is, to my particular way of thinking and with [fol. 1308] my firm, requires more work than it did during that time and my answer is the same with reference to 1932.

My observation, and I know what I am talking about, we do more work now than we have ever done before. It is harder to make sales. The packers' methods of buying the cattle have changed. They have various buyers who buy specialties, and we have got to cope with them in every department and on every single load of cattle we have to sell. We have got to fight with them in order to try and maintain a market which will keep the country from going broke, that is the size of it.

We are rendering to the country and the cattle feeding and hog feeding people right now, a service which is invaluable to them to the extent that we are trying to fight their battles, we are trying to find competition and we are fighting these markets each and every day trying to hold up and maintain prices, not only to the man who has livestock on the day of sale but which will reflect in the thousands and millions of cattle back in the country, and keep the market up for them.

[fol. 1309] In selling livestock on this market I not only make the price on the individual loads I sell, but I contribute in a large measure to making the values for all livestock in the United States.

To make a rate so low that we could not operate under it without cutting our employees down to wages that they can hardly live on, and cheapen up the service in every department, I feel that we are destroying the open market and we cannot cope with the conditions that exist on the buying side.

I could not render our service any cheaper and keep up that service. I could not render that type of service which we now render at a reduced rate. In my judgment the effect of a small reduction upon the business as it is transacted by me on behalf of our patrons, is that the patrons as a whole would derive very little benefit and as to my firm, I would lose money and have to cheapen my service.

Q. Do you subscribe to the statement of the arbitrators in fixing the rates under which you now operate that it would be—they said in effect that it would not be desirable to have necessary talent leave the field of the livestock commission business and engage in any other occupation or undertaking, but that they felt that the rate should be sufficient to keep able talent in this business; do you subscribe to that view?

A. I will have to ask you to read that question again, please.

(Whereupon the question was read.)

[fol. 1310] A. I don't just exactly understand that question, Mr. Boyd.

Q. Well, the thought—I think the arbitrators meant to say and did say that they felt that the rate ought to be high enough to keep talented people in the business and that the rate should not be reduced to a point where that high talent that is in the business would leave it and go somewhere else, if it was possible for them to do so; do you feel that the best interests of the patrons of this market and all livestock producers in this Nation is to maintain these rates at a point where you would be able to remain in the business and the other class, high-talented, exceptionally skilled men can remain in it and make a livelihood of the kind that they are entitled to in this society?

A. I do, yes, sir.

Q. You have indicated that you believe that the solicitation of business from your viewpoint and as it may affect your type of business is expensive and inadvisable, or

that the expenses should not be made except, I take it, under peculiar circumstances, that on the whole that type of road work of simply soliciting has not been in your judgment profitable to you as a commission firm?

A. It has not been to me, no.

Q. Do you believe that that may be necessary and justifiable in the case of some of your competitors?

A. I think it is necessary, yes, sir.

Q. The class of business that you have, which you have handled over a period of years makes it less necessary than in the case of some of your competitors?

A. Yes, sir.

Q. And the lack of necessity for solicitation in your case, you think is peculiar to your business?

A. I do.

[fol. 1311] Q. Would you like to attempt to go out into the market and employ a salesman-manager for McCausland Hoag and Vaughan at a price that would be the average of employed salesman-managers on this market or employed managers serving in any other capacity?

A. Read the question, please.

(Whereupon the question was read.)

A. If I was compelled——

Q. That is, to take your place, you understand?

A. Yes, I do not want to appear egotistical but I would not attempt to hire a man to take my place, and if I would be incapacitated where I would have to hire a manager, I would consider his services about equal to what I would have to pay for a cattle salesman because his duties mean a lot to the firm. He could make you or break you in short order.

Q. Would you not think or would you not give serious consideration under existing conditions and the precariousness of them to close your business rather than take such a hazard?

A. I would close it.

Recross-examination:

My commission business, and I do not think it is unlike any others, it is personal service. If I were to die, my business would close up tomorrow, and if I was to attempt to hire some one to take my place, it could not be done for the simple reason that the bulk of my business and the

business of other houses—this is my opinion—is based upon the personal service rendered by the individual. Speaking [fol. 1312] for myself personally, I would not hire a manager. If I would become incapacitated I would close my business. The hiring of Mr. Sullivan releases some time for me and Mr. Bell so that we can do other things, nothing outside of the business, but it enables me, if a man sends me a personal invitation, to go to the country, my business will be conducted in my absence the same as it is being conducted over there while I am attending this meeting.

In the case of where I had one of my customers divide his consignments and send part of it to another firm on this yard, I got the bulk of the business. If he was shipping ten loads of cattle, he would possibly give me six and another firm two and another firm two. What I mean about being more concerned and have been about the livestock commission business, with my particular business in the past two years than I have ever been before; well, there are a great many propositions come up in this business. Everyone wants to borrow money, and may want a loan, may want to make drafts, he may be shipping cattle and they may be mortgaged to someone else, and you have to be ever on the alert to protect yourself and to protect the banks in the country or anyone else. In fact, the country is very short of money and peculiar things come [fol. 1313] up in the business every day or every week. We are bonded; we, of course, do not want to lose any money or go broke. We want to protect everyone as well as myself.

I do not believe that commission rates should bear some relation to the value of the livestock. I do not, because in 1922, and prior to that time, it was easy to sell cattle as compared to now. You do two or three or four times as much work now on the same class of cattle. This is an eternal struggle over there now to get a man something for his cattle.

As to just how I would determine the fairness of our commission rates at the present time; in fairness, I believe that a man is entitled to fair compensation for what he does. It may appear to some that wages are high to some of these salesmen. We are compelled to hire them for the protection of the country and our business, for the simple reason that a first class salesman is what I call a specialist. There is not one man in fifty that ever comes to the Union

Stock Yards—I may be a little wrong on the figures, with the intention of making a steer salesman or cattle salesman that ever accomplishes that feat, because a man that is a real steer salesman or cattle salesman, he is a specialist, the same as a doctor or a lawyer who makes a success of it.

[fol. 1314] Q. Would you favor a rate which would maintain everyone in business, regardless of the volume handled?

A. That I cannot say. It is stated that there are too many in the commission business; it is also stated that there are too many farmers; they raise too much grain; and who is to tell me that I am one of the ones that should quit, or tell any particular farmer to quit?

Q. Do you think, Mr. Vaughan, that the commission rates should be high enough to maintain a firm in business if it handled only fifty cars in a year?

A. I would not attempt to make any remark on the fifty-car man.

Q. We would be glad to have your opinion for the record.

A. Well, it might be construed as being prejudice, so, if you will excuse me——

Q. You prefer not to answer that?

A. I prefer not to answer.

Q. Is that because you do recognize that volume is a factor?

A. I am not a large firm, but I figure maybe that somebody would say that I was not big enough to go along, and it is not the biggest firm,—I will make this statement,—that renders the best services at all times.

I mean by that a firm might render a satisfactory service, irrespective of volume. I do not recognize volume as being the successful factor, as far as my individual firm is concerned. I could not conduct a successful commission busi-[fol. 1315] ness on fifty cars. My ambitions are higher. As to what volume of business I would want, if I were starting a commission firm; my ambition, at all times, has been to handle successfully a medium sized firm. By "medium-sized" I mean two or three thousand cars a year, because I felt, with that number of cars, I could have personal supervision over it and be able to hire first class men to go along with me. I have given the experience of my people with the exception of Mr. Bell. Nothing has been asked re-

garding him. He came up through the ranks of my firm for thirty years, and, during the past ten years, has been a butcher cattle salesman.

I said that it has been my ambition to handle a medium-sized business which ran from two or three or four thousand cars. My present organization can handle that volume of business but no more without extra help.

We sell some cattle for traders. All three of us do. They are harder to sell than fresh ones. That is because they are usually bought one day and carried over and they become stale. The packers suspect they are stale and they back away from them, on the same theory that I would go on if I was going to a store, if I could buy a new suit, I would not buy a second-handed one.

[fol. 1316] In making loans, I draw the mortgages and figure the notes, and handle part of the correspondence but as far as the bookkeeping, the sales bills and the general office routine, I have nothing to do with it. I do not make out account sales. I am glad I don't. I used to be able to figure them but these cooperatives and one thing and another, are too fast for me now.

Redirect examination:

I have sold cattle in Chicago since 1905, have been in business for myself possibly twenty-five years, I worked hard. I get at the yards at six o'clock in the morning, every morning and part of Sundays, and I spend my entire time and give my attention to this business, and it has been a struggle on the present rates, and I know that I have been economical and did plenty of work that I should have some one else to do, try to make a living, and it is a business, while I spend my entire life in it, if I was to die tonight, it would be wiped out, my estate and my children or my wife would not get one cent benefit.

Under present conditions I think the trader is just as essential as the packer on most classes of cattle.

We don't class stockers and feeders as seconds at all. The traders are essential to this market. They buy thin [fol. 1317] cattle and sort them and sell them to the man to go back to the country to be fed.

Recross-examination:

Q. Mr. Vaughan, in your opinion, do you think that the length of time that a man has been engaged in business on

the market should be a factor in determining of rates that he should charge for his services?

A. Absolutely not, but a man cannot build up a business or become an established, well-known salesman unless he is in the business for years. If that was not a fact, there would be thousand commission men where there is not possibly a hundred now.

Q. Does it happen frequently that you receive seconds to sell and are not able to sell them and turn them back at the end of the day?

A. Had that yesterday.

Q. Is that an unusual occurrence?

A. Well, it is not unusual, no.

Q. Does that happen more frequently? Do you carry over livestock for country shippers or not?

A. Yes.

Q. Are they brought back to you the next day usually?

A. No, sir.

Q. You don't get a chance to sell them?

A. I would not take them, because everybody in my division would know them and they would not bid me on them. The speculator would try to fool somebody else in some other division.

Q. Do you recall the largest number of carloads of cattle you have ever sold in a day?

A. Yes, sir.

[fol. 1318] Q. How many?

A. Seventy-nine loads.

Q. How long ago was that?

A. That was during the War. Not during the War, but during the strike, at the time I was getting business from around Burlington, Illinois, and the Illinois Central was about the only railroad that was bringing them in here. I had 79 loads of cattle one day and had them sold before ten o'clock.

Q. Do you mean that you were practically the only firm that had cattle?

A. I practically had the market cornered for a few days and I got something for them too.

Q. That was a rather unusual circumstance?

A. Most unusual and very pleasant.

Q. Do you recall the largest number that you sold in the year 1932, you personally?

A. Well, I could not state at any time what I sell personally as long as I have got other men with me, because it is split up.

Q. Do you recall the largest number of cattle your firm handled in any one day in 1933?

A. No, the records will show that only, I haven't it.

Recross-examination:

I will be frank to say that the truck business has always been a thorn in my side, I do not solicit truck business at all.

[fol. 1319] Mr. Eugene Albert Woods, a witness called by the Respondents, testified as follows:

I am a cattle salesman. Yesterday we had seventeen loads of cattle. They were sold by three of us.

Mr. A. Gilmore, a witness called by the Respondents, testified as follows:

Direct examination:

I live mainly in the stockyards, but I sleep at 6810 Loomis Street. My firm is Swanson, Gilmore and Castenholz. I have one partner, Mr. Castenholz. I generally have charge of the office end of the business and I sell hogs for the firm.

I have been a hog salesman nearly forty years, between thirty-nine and forty years. I have been interested in the business since 1907, started in, and it will be forty-one years the 6th of September. I assume the general management of the concern but advise with Mr. Castenholz regarding transactions that arise from time to time. My first work from day to day is looking over the mail and seeing if there is anything that needs attention, any financial matters, the next business is to get to the hog alley as soon as I can. I verify and check over all the work that is done in the office, also and very particularly all country remittances [fol. 1320] to see whether they are correctly completed, also all correspondence and all money matters of all kinds pertaining to the business. I employ a bookkeeper and we have

a cashier. I have a stenographer, and myself. I do write letters myself, unfortunately. The men who serve in the yards give very little assistance in the handling of the office work.

I have two men selling hogs with me and one of them also helps with the yarding and one man, besides, steady yarding, and sometimes some of the other men help yard some of the hogs and sometimes I do. My son sells hogs. We also have Mr. Mahoney selling hogs. He has been with us pretty close to twenty years, I think. My son has been in the yards about eleven years. I have had occasion to notice the types of arrivals of hogs with reference to the number of owners that come either in cars or in trucks, the number of drafts it is necessary to sell hogs in, in order to perfect sales. I don't know that I am familiar with any of the statistics which are available that have been taken from our records by the government in the case for the year 1932. I could have my own ideas and estimates, sometimes it seems like it is ten or fifteen times as many today. You never get through. From my observation and experience in the hog house, I believe that the selling of hogs requires more time and attention, sales effort, than it did [fol. 1321] five years ago; enormously. The condition has been changed very much by the class of stock that arrives and the condition it arrives in, a great many more owners, conditions of the market, the fact that you can sell only a limited number specially sorted stuff to a lot of different buyers and you may have to show bunches of hogs to a dozen people when formerly you would not have to show them but to one; you may have to take the one bunch and cut it into a dozen pieces to sell them, and make a dozen different pieces of one bunch of hogs, and then sometimes you have got some of them left.

Q. In the month of August, you had 20 single decks, 23 double decks, with 3,722 head, with 224 drafts and they are all single ownerships. In the same month of January, same year, you had, in plural ownerships, 39 single decks, 7 double decks, 3,620 head with 335 drafts. During November you had 7 single decks, plural ownerships, with 438 head, from 39 owners, with 64 drafts. You will notice a decided variation in the number of drafts between months.

A. Yes, sir.

Q. As well as a very considerable, you had one-sixth of

the amount of business for that time in October than you had during the month of January and eighth of the amount of business in November that you had in February. In Mixed No. 2's, which includes all mixtures, cattle, calves, hogs and sheep, except cattle and calves alone are not considered, in straight cars, single ownership, during the month of June, you had 459 head of hogs, four owners with 48 [fol. 1322] drafts. During the month of March, you had 1,343 head from 9 owners, consisting of 93 drafts. During the month of October, plural ownerships, you had 415 head requiring 84 drafts and in April you had 400 head, plural ownerships, from 49 owners, with 99 drafts. In the truck-in business, hogs, the range of your receipts by months was from 1,550 head in March to 3,001 head in August. During the month of January, you had 2,690 head of truck-in hogs from 116 owners with 263 drafts. During the month of August you had 3,001 head with 189 owners with 356 drafts. And during the month of March, you had 1,556 head from 115 owners with 238 drafts. So that in the case of truck-in business, you will notice a decided difference in the average number of drafts for the number of head sold during those months. No doubt, and it is getting more so all the time.

Q. * * * I will ask you to discuss, if you will, the policy of Swanson, Gilmore and Castenholz, with reference to the limitation of expenditures for all purposes, if you exercised any such limitation during the years of 1931 and 1932. I will ask you, first, if you know the general results as shown by the Government Profit and Loss statements for the two years.

A. I do not know what their statements may have been, but I know——

Q. So that you may be familiar that, I——

A. I do not know what their statements may be, but the results of the business have been less each year with the amount of work added on to each year and almost every day. If I can say so, I put in a long time, instead of being able to ease up, I am gradually working harder all the time with far less results.

Q. You mean that it is less profitable to you?

[fol. 1323] A. Yes, sir, that, of course, is mainly due to the class of business that comes and the way it has to be handled. Keeping busy keeps you out of mischief, I guess, so it is all right.

Q. Well, your company sold, per salesman 433 cars of hogs. That is arrived at by taking the mixed cars and seconds and truck-ins and applying an equivalent.

A. Yes, sir.

Q. And all classes of business included, you had an average of 433 cars sold per salesman, which would make a total of 1,299 cars for all of you.

A. Yes, sir.

Q. What have you to say about the necessity of using three salesmen for the sale of 1300 cars of hogs a year of 1932?

A. Three salesmen are far more necessary with that number of hogs at the present time than one was with five times that many hogs fifteen years ago.

Q. And why, will you explain why you think that is true?

A. I think I have mentioned it, but I will go through it again. We used to have perhaps an alley full of hogs and we could take one man, one packer buyer perhaps and sell him nearly all of those hogs. At the present time, you might take that same packer buyer and he might buy ten hogs out of this bunch and twelve hogs out of another bunch and maybe two of another bunch, and you have to start in again on that same leavings and sell what you can out of them.

Q. What do you think, Mr. Gilmore, if the statement were made in this case that Swanson, Gilmore and Castenholz because you did not average better than 500 cars or carload equivalents per salesmen a year, were inefficient?

A. I do not believe I understood you.

(Whereupon the question was read.)

[fol. 1324] A. Well, we are working faithfully, and we will have to leave the customers judge whether we are efficient or not.

Q. Well, do you think that it could be reasonably expected that you and your other salesmen, in order to be worth the rate that you charge, would have to sell or should have sold or could have sold a larger number of hogs during the year under the circumstances and in the parcels in which you had to divide them?

A. It is possible that we could have sold more if we had more room to handle it in; some days we could have and some days it would have been an impossibility.

Q. Did you sell out today?

A. No, sir.

Q. What do you call the hog market today?

A. A few hogs early were steady and a later market five to ten lower and closed very dull at a decline, with a good deal of the underweight common stuff at more than decline and hard to move.

Q. What proportion of your receipts did you carry over?

A. I really do not know; I didn't see the papers; I got a bite to eat and came over here and I do not know what holdover there was, but there was a moderate amount left.

Q. What was your holdover?

A. I have one load.

Q. What kind of hogs?

A. Medium weight hogs, only fairly finished.

Q. Did you get a bid on them?

A. Yes, sir.

[fol. 1325] Q. What time did they arrive?

A Early this morning.

Q. You had the benefit of the shippers market and the late market?

A. Yes, sir.

Q. And you didn't get a bid that you believe justified your selling them?

A. I had only one bid on them which looked ridiculously low and, for that reason, I have them left over.

Q. Do you think that based upon the years that you have been in business, charging commission rates, that it would be fair to say that because the business done by you as a salesman has decreased in volume, due to the increase in the difficulties and an increase in the number of sales, that because of those conditions your average per man or per salesman is lowered, that that ought to serve as any possible justification for a lowering of rates per unit of business handled?

A. I would like to have had an opportunity—I don't think it can be had—for any or every one of these gentlemen to put in a day over there with some of us when we have real rard work. I think they could judge very well in regard to it. The efforts and the work that every individual puts forth now, in proportion to the amount of busi-

ness that they handle is easily five times what it was ten years ago, and it seems to me that everybody is supposed to get paid for their efforts and, if there is such a thing as getting fair compensation for the efforts that are put forth there now, there is nobody getting it.

Q. Do you do any soliciting yourself on the road?

A. A moderate amount. I have very little spare time to get away. I get away a little.

[fol. 1326] Q. Did you keep the expenses of your company as low as it was possible to keep them in the rendition of good service to your patrons during 1931 and 1932?

A. We have always kept them that way, when we could keep from hurting our service, why, we have the expenses as low as we could.

Q. You don't feel that you have got too many hog salesmen or too much help in any capacity working for you?

A. I do not. Sometimes we need more, but we cannot afford them.

Cross-examination:

Mr. Castenholz and I employ the people who work for us. I spend all of the market hours each day in the yards from eight to three. I don't know that there is any real beginning time, but we are supposed to quit at three. I spend all the seven hours in the yards, nearly every day—Saturday nobody does.

As to how we divide the work among our salesman, our three hog salesmen, it is a matter nowadays of being able to catch the buyer while he has got an order. One fellow has got his eyes out for the this fellow and the other for another fellow, and it does not make any difference, he is going to show him the class of hogs he thinks he wants. My boy makes a special day of selling the packers, although if we have got two or three loads of good hogs, and he [fol. 1327] thinks the buyer has an order for two or three loads of good hogs, of course, he is going to grab him. The same on the packing end. If I see some fellow standing, I am going to grab him in, and try to get him on them. We all work together on practically everything. The buyers are liable to be any place when we grab them, maybe along in front of your alley, maybe away somewhere, maybe a few blocks away from your alley and you ask them if they

want something. If he does you take him to your pens. We do not go and get buyers who are in the alleys of some other commission firms until they are through trading with the people whose alley they are in. My partner and I agree on what we pay them when we hire employees. As far as the salaries that we pay everybody, we are trying to pay them what they make themselves worth to us, it will apply to them just the same as everybody else. As to the difference in salary of my two salesmen, it would be very apparent that a man thirty-four or thirty-five years old could do a great deal more work than a man of seventy. One is seventy and the other about thirty-four. The man seventy years old cannot hustle around like the younger fellow. Mr. Mahoney and I also are out here at 5 o'clock on Monday mornings, hustling, down yarding and taking care of [fol. 1328] and shaping up stuff—but one day a week is about all we can stand. We cannot stand it every day. I mean by that we do not come down that early every morning. On the other days I come down from half past six until a quarter after seven, and sometimes stay until twelve o'clock at night. Mr. Mahoney comes to the yards every day and sells hogs every day. The occasions when I stay until midnight are caused by finishing up the work and getting the bills out and the letters off. You cannot write letters until you get the bills. That happens too frequently I am sorry to say. Last Tuesday, for a sample, I would say I probable got here at 7 o'clock and we ha a very large amount of picayune truck stuff, a terrible lot of it. We got to the house from the hog alley at four o'clock with a stack of tickets big enough to choke two or three hogs. I got out of the office at a quarter to twelve. Mr. Mahoney helps in the office only in writing letters to his own friends or customers. He did not stay as late as I did on Tuesday. I write a letter on each consignment of truck stuff. That is I write a letter to each owner. I dictate letters and I also write them myself on the typewriter. I write all the hog end of the letters and a certain amount of letters in regard to business affairs.

[fol. 1329] Q. Do you recall how many hogs you had by truck last Tuesday?

A. I could tell you—I don't know now; there is a mess

of them, I can tell you, there was a lot of owners, I know that.

(Witness makes computation from book.)

A. (Continuing:) 301, if I footed it right. I think I did I went over it up and down.

Q. 301 head?

A. Yes, sir.

Q. And do you know how many ownerships there were?

A. I will have to do a little counting then.

(Witness consults book.)

A. (Continuing:) Thirty-nine, if I counted right here, and possibly more than that because there were two lots—yes, it would be some more, possibly up to 50. There is two lots billed to Waterman Shipping Association, there is one lot of 27 and one of 52. They ship their stuff in, and I rather think, if I remember right, in that 52, there were about ten owners in that. He lists on the back of his sheet the different owners, and the marks for them, so I really counted them as two where there probably were ten or twelve or maybe fourteen in those.

Q. And did you have any carlot hogs that day?

A. Yes, sir, I did.

Q. Will you tell us how many, please?

A. I will.

(Witness examines book.)

A. Five and three pieces.

Q. You mean five carloads?

A. Five carloads and three pieces.

Q. Were those single or double decks?

[fol. 1330] A. All singles.

Q. Could you tell us without any difficulty how many head were in the five loads?

(Witness makes computation from book.)

A. 245 head in the five loads and three pieces. The big end of them were packing hogs, heavy packing hogs. There was one load with 33 hogs in.

Q. About what weight would those 33 average?

A. I think that load ran up close around four hundred.

Q. Mr. Mahoney receives a salary and also a part commission?

A. Yes, sir.

Q. Does your firm sell hogs for anybody else?

A. Yes, Adler Sons and Company. In other words, their business is cleared through us.

Q. And your salesmen sell his hogs?

A. Yes, sir.

Q. Did these consignments which you mentioned last Tuesday include any hogs for him?

A. I think he had three truck bunches in there, if I remember right.

Q. And they were added into what you gave us?

A. Yes, sir.

Q. Now, do you recall what time you got through selling on Thursday?

A. Two minutes to three, just before the whistle blew?

Q. And did you, then, sell all of them?

A. We disposed of all the hogs that day.

[fol. 1331] Q. And did you, then, go to the office?

A. Yes, sir.

Q. You did not go to the office until that time?

A. I did not go to the office until four o'clock. It was four o'clock when I got to the office, when I finished up weighing.

Q. How many people in the office make out account sales besides yourself?

A. Two regularly, and my son sometimes and I sometimes.

Q. And on that particular day, you worked until 11 o'clock, was it?

A. I worked until a quarter to twelve.

Q. And was all that work in connection with remittances?

A. Remittances, getting the bills down and making the letters and I fortunately had my supper at twelve thirty that night.

Q. And were your remittances mailed as you got through at the office.

A. Yes, sir, mailed, I dumped them at the corner when I went out, in fact, I did not dump them, I gave them to the policeman to give to Swift's mail man.

Q. How many of your office force remained that late?

A. I think the latest one besides that left about fifteen or twenty minutes before I did.

Q. Did all your office force stay and work?

A. No, sir, there were three of us there until perhaps eleven twenty.

[fol. 1332] Q. But as a rule you do sell all the hogs you receive, do you not?

A. Eventually. You eventually get rid of them or you could not make returns, but a great many days you have to carry some pieces and odds and ends over.

Mr. A. E. Holbert, a witness called by the Respondents, testified as follows:

Direct examination:

I reside in Chicago and one of the partners of Holloway and Ogren. I manage all the cattle business and am a cattle salesman. I have been selling cattle nineteen years.

I started with Morris and Company in the buyer's office. I used to follow Bill Mallory and Nelson Morris. I did that for about four years. Then I went to work for a commission firm as a yardman. I first sold butcher stuff for about eight years. I have sold all kinds of cattle, steers and butcher stuff. I have been with my present firm for twelve years. I sell the steers and some of the butcher stuff, sometimes all of it and sometimes just the steers, according to the way the business runs for the day. James Kane is the other cattle salesman and he sells cattle. He is supposed to sell the calves and bulls and some of the cows under the different grades of cows. We have a yardman in the cattle alley. I help yard cattle and help weigh them. I do everything.

[fol. 1333] A very large proportion of our business in 1932 was in plural ownerships, cooperative shipments. That consists of livestock shipped by rail and owned by more than one person. Mostly association. Most of our business comes from Illinois and Iowa and Minnesota.

Q. You had 17 cars of cattle which was single ownership No. 1, meaning that they contained cattle and calves only in mixture, single ownership; and you had 115 cars plural

ownership cattle and calves only. Now, in that kind of business, who sells the calves or did sell the calves in 1932?

A. Mr. Kane.

Q. And who would sell the butcher stuff?

A. As I stated before, it depends a good deal in regard to the way they are running, whether the cattle are running to steers or she-stuff. If they run to steers, why, I just sell the steers and he helps with the butcher stuff. We just have to arrange it that way. At all times he keeps posted, of course, and I always sell something. The two of us are salesmen.

Q. During the month of December, 1932, you had 2¾ carloads of straight carloads of cattle under the first item on the work sheets, ¾ of a carload, there were 18 head, 4 owners with 18 drafts. In the next car, there were 31 head, 4 owners, one account sale, and three of the animals were sold in three drafts and three were sold in one draft, 2 were sold in one draft, 7 sold in one draft and 13 sold in one draft. The third car that you had that month contained 25 head. [fol. 1334] The first parcel was sold, 6 head in 6 drafts; the next was 6 head in 3 drafts; 3 head in one draft; and 7 head in one draft; and 3 head in 3 drafts. Do you have any recollection of those cars, independent recollection of them now?

A. You haven't got the name of the consignor?

Q. No, sir. Now during the same month of December you had 5 cars of straight cattle, single ownership; the first car contained 26 head; 4 of them were sold in 4 drafts; 22 of them were sold in one draft; and, in the next car there were 27 head; 3 of them sold in 3 drafts; 6 in 2 drafts; and 17 in one draft. In the next car you had 29 head; 5 were sold in 5 drafts; 4 were sold in 2 drafts, 3 sold in one draft, 4 sold in one draft and 6 in one draft and 7 in one draft. The next car contained 21 head; 2 of them were sold in one draft; 19 in one draft. The next contained 24 head; 16 in one draft and 8 in the other.

Now, in the case of Mixed No. 1, cattle and calves only, during December you had one carload that contained 23 head of cattle and 10 head of calves. In that load there were 9 owners of the cattle and 4 owners of the calves. In the next 16 head of cattle you had 16 drafts, 4 head of cattle you had 2 drafts; 3 head of cattle you had one draft. In the case of the calves 4 calves you had 4 drafts and for 6

calves you had one draft. The next load contained 22 head from 8 owners, in cattle and calves and had 14 head of calves from 9 owners. You sold the 10 head of cattle in 10 drafts, 4 head of cattle in 2 drafts, 3 head in one draft and 5 head in one draft. The calves, you sold one head in one draft, 6 head in 2 drafts and 7 head in one draft. The next car had 22 head of cattle from 5 owners and 5 head of calves from 2 owners. The cattle were sold 4 head in 4 drafts, 8 head in 2 drafts, 6 head in one draft. The calves were sold 2 head in one draft; and 3 in one draft and the last car which you had that month contained 27 head of cattle and 9 calves; 27 head of cattle were from 5 owners; 8 head were sold in 8 drafts, 2 in one draft; 6 in 2 drafts, 4 in one draft and 7 in one draft.

[fol. 1335] The 9 head of calves were sold together in one draft. During the month of December, you had calves which arrived by truck; during the entire month, you had two consignments that were sold at one draft containing five head each, which was the largest number you received and in each other instance, with the exception of one 2-head consignment of calves which were sold, was weighed separate. Do you know whether or not those calves sold by Holloway and Ogren are sold separately for ownership or are they sold together? Do you know anything about that?

A. I cannot say, but I have an idea; I was not there at the time and didn't sell them, but lots of times you could sell three prime calves together to the same man and belonging to three different men. They would have to be weighed separately.

Q. In the case of truck cattle for the month of September, the record shows that, without exception, in the case of 75 head, 46 transactions, each animal that is received was sold and weighed separately. There were two instances during the month where you had 6 head sold in 5 drafts and 3 head sold in one draft, and, other than that, they were all sold separately and weighed separately according to this record. Now, do you know whether or not truck-in cattle would be sold together and weighed separately?

A. Why, it depends; if there is two cattle of the same weight, it would be killed for the same purpose and exactly the same quality of fat, they would be sold together and would have to be weighed separate to get the weight.

Q. Well, if you had a separate scale ticket for each one of these animals, with the exception of 9 that sold in six

drafts, do you believe that those animals were actually sold separately?

A. Yes.

Q. Or do you think that they were sold together and weighed separately. I will let you look at the record so that you can tell.

[fol. 1336] (Respondent attorney handed record to witness.)

The Examiner: Can you answer that now?

The Witness: To the best of my knowledge, I think they were all different owners.

Mr. Boyd (continuing): During the month of October, according to the work sheets, you had 112 head trucked-in that were sold in 79 drafts from 50 owners. Do you think that would be the case in October as well?

A. Yes.

Q. The record here shows that you had 45 straight cars for the entire year, single ownership, cattle, containing 1103 head and that you had 278 drafts to dispose of them, which would be less than 4 cattle sold in a draft. How do you account for that small a percentage of business which contained such small drafts, small number of head per draft.

A. In most of these cooperative shipments they run from 8 owners; I think we had one car with 55 owners of calves in it and we have to weigh them separately and sort them up. You can grade them pretty close; lots of times you will find a man that will have a car that is graded into canners and possibly a heifer or two and a bull, maybe a couple of calves, and a man that buys the canners, he will not look at the heifers, and the result is they are sold to four or five different people.

Q. How much stand-by or idle time do you think that you and Mr. Kane had during the market days of 1932?

A. What was that question?

(Whereupon the question was read.)

A. I could answer that in regard to the market day, that it is invariably 2 o'clock before I get in from the cattle [fol. 1337] alley anyway; that is early, 2 o'clock, from six to two, what percentage would that be?

Q. Well, you and Mr. Kane averaged 206 carloads a piece for the year; that would be 412 cars for the firm. Now that is counting the truck-in business as a carload.

A. Yes.

Q. And it is reducing your mixed cars into the carload equivalents. Do you believe that you and Mr. Kane were pretty busy selling that stuff which you sold?

A. Yes, sir.

Q. Do you think that to reduce your business to carloads is a fair way to treat it?

A. You mean to take a half a load or a quarter of a load of cattle with these truck loads and count the number of head as a carload, is that what you mean?

Q. Yes.

A. I don't think that would be a fair way.

Q. Or you take, say, 25 to 26 cattle that arrive by truck and call that a carload, or you would take the same number of cattle, for illustration, that may have come in two, three or four owner lots in a carload, and call 25 of them a carload, where it might take six, eight or ten pieces to make a clearance?

A. If those cattle all arrived at the same time, you might call it a consignment of cattle, whether it is one car or two, equivalent to two cars, providing they are all here and all together, but invariably when you go to figure out a carload of cattle from the trucks coming in, they are coming in all day long and you just—if you do say one carload, the way you have got it figured out as one carload, you might have [fol. 1338] to go and get a cow buyer five times or seven times or ten times and try them all. You not only get Armour's but Swift and Wilson, and if Hy-Grade happens to be buying that certain kind, you figure he is the best man, and you may have to get him five times, which is some job in itself to get him there five times.

Q. Then you think that to reduce your business to a carload basis and discuss the number of cars you handle is or is not a proper unit of work that you have to do?

A. I don't think it is.

Q. You don't think it is?

A. No, sir.

Q. Do you believe that the number of sales you have to make in order to sell a carload would be a better basis?

A. The number of sales I think would be.

I could not say off hand how our receipts arrived on the different days through the years 1932 as to mixtures.

Any time I don't think I am getting the market for them I hold them over. That does not happen so very often. Our shipments are arriving in the same mixed up condition that they arrived in 1932.

Q. Your average and Mr. Kane's average was about one carload on every market day for the year, assuming that there are two hundred market days in the year, you sold a carload, and Mr. Kane sold a carload, whether it [fol. 1339] came by rail, by truck, in mixed cars or seconds, or how you received them, your average for the year was a carload. Do you believe that that business as it arrived kept you and Mr. Kane fully occupied on the Chicago market most of the market days of the year?

A. You are taking an average of so many market days in the commission business. Sometimes you have a light day, sometimes they run heavier and Friday receipts are invariably light, and they would cut your average. That would make your average smaller, of course, because there are Fridays when you would not get a carload of cattle, you may get a piece of a load or maybe no cattle.

Q. The Government has frequently asked witnesses: "Would you employ a cattle salesman if his record showed that he only sold one carload of cattle a day?" And I will ask you that question in view of the fact that your average is just about one carload a day?

A. In hiring a man, I would figure up possibly what his business would be for the year. I would never think of averaging so many per day, I would figure that he would have to be capable of selling more cattle than that, weather conditions, receipts of cattle, would have a lot to do with that. We have years, you know, when receipts of cattle are very small and naturally receipts of commission firms are lower also right along with it.

Q. You feel that due to the long period of time you have been in this business, the experience you have had, the ability you have to sell at the market price of the livestock that is consigned to you, warrants your remaining in business, notwithstanding the fact that you averaged but one carload a day?

A. I would think so.

[fol. 1340] Q. And do you believe that in charging the present rates of commission that you are rendering to the

man that employs you the same kind of service, whether you sold a carload or two carloads, wouldn't you think?

A. Well, I have customers that like to ship to a little firm. Whether it is true or not, they think I am going to surely get them the market, make a good sale, and my personal attention, which I always give anyone.

Q. Do you find that you hold your business?

A. Yes, sir.

Q. And that your patrons are satisfied with the service you give?

A. I do.

Cross-examination:

I don't know how the cattle business handled by our firm in the year 1932 compared with the previous years, whether it was larger or smaller. The partners in our firm arrange their compensation; Mr. Holloway gets 55 per cent; and Mr. Andrews, and I and Mr. Ogren divide the rest of it. The reason for that differentiation is that I went in with them with that understanding. Mr. Holloway and Mr. Ogren had been in business for years before I went with them, and then Mr. Ogren was just a minor partner. I [fol. 1341] would say that Mr. Holloway is worth more to the firm than I am. I don't know just exactly how to express it, but I think he is. Mr. Holloway does not go out on the road as often as the rest of us; he spends most of his time in the hog alleys until the market is over.

We made a couple of changes in salaries this year and we had some reductions in 1932. We had no employees in 1932 that we do not have now.

Redirect examination:

I do not think I did much soliciting in 1932 or in 1931 individually.

Recross-examination:

As to my feeling that I do not do too much soliciting personally, I figure we have three men in the hog alley and only two in the cattle alley and I always want to be there at least the first four days of the week. In fact I don't think I have ever missed those four days except a short period that I was sick, and when I make a trip, I either leave Thursday night or else Friday morning, if I

go by train, naturally, I leave Thursday night and get there Friday morning and get back here either Sunday morning or Monday morning, either way. As to whether I think the members of our firm could do less soliciting and still remain in business, I am of the opinion that you have [fol. 1342] to go out and see your customers every so often. At least there is always a better feeling among your customers themselves. We are always looking for new business. A trip is made with the purpose of seeing our regular shippers and also new business. I think that during the course of a year, I actually call on each one of our old customers personally. I mean who ship by carload. I also have customers who ship a whole carload of cattle by truck, even from Iowa. You naturally stop off and see him.

Ed Holloway determines the advertising policy of the firm. The only advertising that we do we use a market letter and a little road work. It would be impossible to pay a visit to all of our customers, you would have to call them a customer if they shipped in a cooperative shipping association, but there are men there that we never see; an association may ship a load with 15 owners and if you just happen to meet them, you hold conversation with them, but you would hardly go out and see them. I call on the manager of the association. I appraise the farmers' livestock regardless of whether other commission men have done likewise.

[fol. 1343] Mr. J. C. Eastes, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Glencoe, a suburb of Chicago. Am in the sheep commission business. Am one of the owners of W. R. Smith and Son at Chicago. The other owner is John Smith, who is located at Omaha. I have entire charge of the management of the Chicago house. I am a sheep salesman. We have a salesman and a yardman at the present time besides myself. C. J. Davies is the salesman. I sell most of the sheep. We receive sheep for sale, sheep and lambs from most of the middle states, and practically all the range territory and we get livestock from as far as the Pacific Coast

states. We do not receive cattle and hogs for sale. I have been selling sheep since 1903; my first connection with the livestock industry was as a yardman at Louisville, Kentucky. I was there four or five years. I went from Louisville to National Stock Yards, East St. Louis, Ill. I sold sheep there as a salesman. I remained in St. Louis selling sheep for thirteen months. I then came to Chicago with John Clay and Company in the capacity of sheep salesman. I remained there less than two years. I then went with the cooperative commission company in 1905. I remained there about forty months and then we organized the firm of W. R. Smith and Son in 1910. The other partners were W. R. Smith who is now dead and his son.

[fol. 1344] Since the organization of W. R. Smith and Son I have devoted my entire time to the sale of sheep at Chicago and soliciting. Matters of much importance I consult my partner, but matters of lesser importance I decide myself. I decide if there will be any soliciting out of Chicago myself. Mr. Davies and I do the soliciting from Chicago. I decide what trips he will make.

Q. Have you had any occasion to review the sales made by months, indicating the number of head and the number of drafts necessary to dispose of them?

A. No, I could not answer that.

Q. During the month of January, 1932, you had 13 singles and 62 double decks.

A. I do not know. I take it for granted that it is so, if you are reading it off.

Q. In single ownership selling. I am reading from the work sheets of the Government that are taken from your records. In those cars were 16,554 sheep or lambs, necessitating 155 drafts; during March you had 3 singles and 31 doubles, 7705 head from 22 owners, necessitating 76 drafts. During the month of May you had 31,824 head from 54 owners with 257 drafts, so that in the single ownership you had over four times as many sheep and lambs to sell in May than you did to sell in the month of March. During September, you had 3 singles and 112 doubles, 30,000 head with 279 drafts, and the following month in October you had less than half what you had in September, 3 singles, 56 doubles, 14,909 head, 33 owners and 153 drafts. Then in November, a month later, you had one single and 14 doubles, all together, or 3,990 head with 9 owners and 53

drafts. What caused the jump from or rather the decline [fol. 1345] from May to June, so that you had only 25 per cent in June of what you had in May and then in November only one-eighth or 12 per cent of what you had in November as compared with May?

A. Well, they are months, it just happens to be that sheep are from certain territories that are being marketed, we get more of them at that time than we do from other territories. Then there are sometimes other markets that have an effect, western markets that have some effect on that.

Q. Of the sheep that were trucked in in October, which was the third largest month, you had 541 head with 54 drafts; in November, which was your smallest rail month, in single ownership sheep was your largest in truck business, you received 1,168 head with 94 drafts; and in December, received by truck 670 head with 44 drafts. You sold, 3,483 head of second sheep, 43 owners in 84 drafts. During the year of 1931, the Government work sheets show that you sold on commission arriving in straight car single and plural ownership 370,669 sheep and lambs. During 1932, 215,007, a loss of 165,000. Driven-in trucked-in, you had 3,454 head as against 5,209 head. In the case of seconds, you had 8,267 head in 1931 and 3,483 in 1932. So that in each branch of the business you had less business than in the previous years. Can you indicate to the Examiner what brought about that condition in receipts to your company?

A. Well, the western markets have pulled quite a little stuff away from us and then the market conditions here are not so good. It might have been the case of more feeders; there are more feeders handled on the river markets than there are here, that is, nearer the center of the grain belt.

[fol. 1346] Mr. Luther W. Conover, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 110 Walton Place in Chicago. I am president of Alexander Conover and Company, a corporation organized under the laws of the State of Illinois. The name was changed from Alexander Conover and Martin in January

1922. I am the principal stockholder. The other stockholders are my wife, who owns a little stock, my son George, Ed Stewart and my secretary, Madie Dalk. I have been in the livestock commission business for 40 years, and have been selling cattle over forty years on the Chicago market. Our firm sells cattle, hogs and sheep. It has always sold cattle, hogs and sheep. I am not interested in any other firm at any other market at the present time.

I have six cattle salesmen. I have six at the present time, one is in the hospital at the present time. My salesmen are George Conover, Sam Savage, Ed Stewart, Fred Hatch and Powell Tully, and myself. I sell fat steers. George Conover sells fat steers with me and Sam Savage sells the stockers and feeders and a few odd cattle. Tully sells the [fol. 1347] calves and bulls. Steward and Hatch sell butcher stuff, heifers and yearlings and cows. There are three in the butcher alley and three in the steer alley. I would say we have eight yardmen. I think we have ten all told doing yarding for us. We had eleven in 1932.

Cattle represent the large part of our business. I don't know that we have made a greater effort in connection with the cattle business, but the heads of the department have always been in the cattle business and it naturally would swing the bulk of the business that way. They never had a partner nor a hog salesman that was interested in the firm any more than on a salary basis.

We have a butcher alley where all the heifers and cows and bulls and calves are put. The three over in that department sell over there, and we three, George Conover, Sam Savage and myself, alternate in the steer alley, and I will be showing one drove and maybe George another and Sam another. Yes, we work on the same cattle. May be I will take one buyer in on a drove of cattle, and when I leave George will take another buyer in on the same drove. When I let that buyer go, George has perhaps got another buyer in the alley showing him some other cattle, and when the buyer is gone, he will shoot him into the other cattle, and I do the same thing.

[fol. 1348] Our business is pretty evenly divided between Illinois, Iowa, Nebraska, Missouri and Kansas. I don't think there is a lot of difference. Possibly more come from Illinois and Iowa. Certain years, certain times, we get more

from Nebraska than we do from Iowa, just as the market warrants.

I have about forty families of three generations I have sold cattle for. They live mostly in the states of Illinois, some in Iowa and some in Kansas. I have usually sold some cattle for them each year during the past forty years.

When we get requests from persons who have cattle on feed or want us to examine them for one purpose or another, we send different ones; we send Fred Hatch sometimes, Sam Savage sometimes, and George Conover sometimes, and I occasionally go. I used to go very often, but in later years I have not gone so often. Sometimes Ed Steward goes out. On a big string of heifers in a certain locality they will send for him to come down. George or I determine who will perform that service and when they will perform it.

I am called the boss. I suppose I am. George though, has authority to do anything he wishes in the way of giving orders to any of the employees or any one else of our organization except me. He does not boss me much.

[fol. 1349] I observe from an examination of Government audit that for 1931 our firm had a net loss of $17,440. And in the case of 1932, firm 4, Government Exhibit 15, blue audit shows that there was a gain for that year. I cannot explain the difference between the two years. I know that for some unknown reason, we cannot, you know, in the commission business, it has been the history for years often firms would start to slip or they would start to gain and you couldn't tell any particular reason why, but I know we made a gain in 1932 over 1931, and the other firms were largely slipping. This year, we are doing the slipping ourselves, in 1933. We slipped 28 per cent this year from 1932, for the first six months of the year. I cannot analyze the situation; I am just a cattle man; I am not an auditor.

All the years I have been in business, the spring months have usually been light, that is our customers, it seems feed cattle in the late summer and fall and market them off the grass or corn. That is the only way I can explain it. We just happen to get a larger volume always from Illinois and Kansas territory through the late summer and fall months.

[fol. 1350] By referring to the blue audits for my firm I find that I spend $173,987.35 for the year 1931, and during

the year 1932 the total expense shown on the blue audit was $126,242.95. The total selling commissions, for 1931, were $134,833.37, and the total buying was $5,092.50, and the country commissions was $84.46. The corresponding figure for 1932 for selling is $139,795.87, buying commissions $4,018.50, and the country commissions $926.90.

Q. Why was it necessary for you to have so many cattle salesmen in 1932? The average was, for the firm 884 cars per salesman.

A. Well, it requires a lot of effort and a lot of time to be put on each car and each consignment, now, more so than it used to. We used to have buyers who would go out and buy 40 or 50 cars right off the bat from one man in the morning, and, now, the last eight or ten years, it looks like they will buy three or four loads and even the head buyers of the big packing companies, they will go in and buy two or three loads and come back and buy another load or two and like yesterday we had eighteen cars of steers in our alley and we had to carry six of them over, only sold 12 of them.

Q. Because you could not get a satisfactory price?

A. Could not get a satisfactory price.

Q. Do you frequently carry livestock over?

A. Well, no, I wouldn't say frequently; occasionally.

I don't know anything about cost accounting. I have never had occasion to figure the cost of rendering the various types of service which we render under the *the* various [fol. 1351] classifications of the tariff. I don't know the difference in cost of handling by our firm of a truck steer and a rail steer.

Q. In the case of straight cars of cattle, single ownership, in 1931 you had 87,060 head sold in 7,305 drafts, about 12 head per draft. In 1932 you had 93,049 head that were sold in 8,200 drafts, that would be a little less than 12 head per draft. Some of the firms whose records have been examined in this case show a very much smaller number of head per draft than in your case, in the case of your firm. What have you to say about the length of time that it takes and the ability of salesmen to sell livestock which requires sorting and selling in small lots as compared to sorting and selling in larger lots?

A. It naturally would take more time to sell them in smaller lots.

Q. Can a salesman in your judgment sell as many cattle where he has to make eight or ten sales to a carload as where he would make one or two sales to a carload?

A. No, he could not.

Q. Do you believe that as the number of sales increase per carload or carload equivalent, that the ability of a salesman to sell quantities decreases?

A. Put that again.

The Examiner: Read it.

(Whereupon the question was read.)

The Witness: Well, it is impossible for him to sell unless by chance he happens to strike a fast, active market, a greater number, with the same ability, that many different drafts.

[fol. 1352] Mr. Boyd (continuing): While the average per salesman which includes the trucked-in, the animals in mixed cars, the seconds, reduced to a carload equivalent, based upon the experience of your carload business, while your salesmen sold an average of 884 carloads per year, are you able to say how many each of your salesmen actually sold during the year?

A. Now, that would vary.

Q. Do you keep any separate record of the sales performance?

A. No, we could not do that.

Q. Your firm is operated for profit, of course?

A. Supposed to be, I hope so.

Q. Would you keep more cattle salesmen working on the payroll than you believed the circumstances warranted?

A. I certainly wouldn't.

Q. Do you believe that your firm gets a very large proportion of fed cattle that are sold in straighter lots than some of the other firms that do business at this market here, or do you know anything about that?

A. Well, I would imagine that our firm gets more than the majority of other firms of fed cattle, perhaps.

Q. The fed cattle are sold straighter than any other class, are they not?

A. Yes.

Q. Cattle out of a feed lot, they are more often sold together than other classes?

A. Yes, sir.

Q. Butcher cattle require the greatest amount of sorting [fol. 1353] and cutting into separate classes?

A. Sorting and cutting and weighing.

I would say the last four months cattle feeders have made a profit but the first two months of the year they probably showed a loss, most of them. Since the advance in all commodities, the feeders, I think have largely made money. Very few have lost money, I think.

Q. Are you able to say, or do you know, the length of time it would take to sell a carload of cattle on any market until you have met the condition on the market, seen the cattle, and worked them out on the market?

A. Well, no, I can't say what the average time is, I guess because you might happen to get some order buyer and sell one load of cattle and work them all the rest of the day and not sell any more until maybe two or three o'clock in the afternoon.

Q. I will ask you to describe the conditions as you recall them yesterday where you said you had 18 loads of cattle, and had to carry one-third of them over?

A. Yesterday we had 18 loads of steers and we sold one load of cattle about 10 o'clock and we sold one more load about 12 o'clock. We worked on all the rest of them and finally about half past two we sold all but six loads—from then until 3 o'clock, oh, about a minute of three, when we finally wound up and sold the last three loads of cattle that we sold for the day.

Q. Can you recall the number of buyers that you showed these cattle to, and when you first showed them?

A. Well, not the number, but we showed them to all the order buyers as well as all the big packer buyers, and we had the big packer buyers back two or three or as high as four times.

[fol. 1354] Q. Do you remember the various bids that were made on the various cattle?

A. Well, one big packer buyer early in the morning, that is, I say "early" it was about ten thirty, bid us six cents a pound on two loads of cattle. We worked on them until we got that raised. About twelve-thirty another packer

buyer bid $6.10 for them and at two thirty we sold them to the original bidder of six cents at 6¼ cents. We had two other loads of cattle that we were bid six cents a pound on by one of the big packer buyers, and we worked on them until we got the other packer buyers, and they did not bid on them, we got the order buyers, they did not bid on them. Finally we got another packer buyer back there at two thirty or two thirty five, around that time, and we sold them at 6½ cents, and six cents was all we had been bid all day on them.

Q. The work papers show in this case, the analysis of account sales for the various firms, show that livestock arrived in various mixtures necessitating a great variation of sales for the various types of business that was handled. In the case of firm No. 42, which handled 45 carloads of straight cattle, single ownership, during the year, for the entire year, the record shows that for 4¼ carloads during January, there were 108 head of cattle from five owners, necessitating 31 drafts, or about three head to the draft. They had three carloads in August that came in straight cars, single ownership, with 69 head, necessitating 16 drafts. In October they had 111 head from four owners that were sold in 34 drafts. Do you believe that if the business of Alexander, Conover and Company came in such classes, in carloads as to necessitate making the large number of sales to sell the various carloads that firm No. 42 had, do you have any idea they would have anything like the salesmen performance that you had 884 carloads?

A. We would either have to have more salesmen or we would have to just get a ticket for them instead of selling them.

[fol. 1355] The fact that it takes one salesman all day long to sell one carload broken up in fifteen or twenty pieces would not indicate that the service he renders to the shipper is not worth the price that he charges. As the number of drafts increase, it becomes more expensive. It takes more time and effort and more salesmen.

As to whether I think that on most market days of 1932 that our salesmen were fully occupied in the sale of cattle, perhaps three days a week; they were the big days. Mondays, Wednesdays and Thursdays. Tuesday is a smaller day on account of the eastern order buyers, it gets to New York too late to kill that week. With certain classes of

cattle we advise not to be there with shipping cattle on Tuesdays. What we call shippers is good enough for the eastern demand. As a rule, the shippers write and advise us that they want to ship on a market day and ask us to recommend the day, and we recommend, Monday, Wednesday, and Thursday. With butcher cattle, or what we call butcher stuff, what they call the house cattle, we let them come Tuesday; we don't try to stop them.

Cross-examination:

On the day that we held cattle over recently, there were six carloads held over. They were all good cattle. My son [fol. 1356] George and myself worked on them. We showed these cattle to several buyers through that day—all day, and we did sell other cattle on that day. We don't work all of our time on any particular load. Of the six loads, we were bid $6.50 for one load of cattle, $6.00 for another load, $5.85 for two loads, and $5.80 for one load of cattle. I believe that was all we held over. They are not yet sold. We received them yesterday morning. I left the yards at ten o'clock and they were not sold at that time. They would be classified as desirable, all good enough for shipping cattle.

I usually handle the loans for our office. It is pretty hard to tell what part of my time is spent in handling loans. Some days it is a good deal of the time and other days very little. We don't loan extensively. On the basis of the year's time I would say that I use ten to fifteen per cent of the time handling loans. The rest of the time I spend writing letters, posting our customers and talk to our shippers and try to advise them on what I think is right in the way of handling and so forth. Most of my time is spent in making sales. The practice of our firm is to have all three salesmen work on the cattle we have for sale. I have in mind the three salesmen. With reference to the butcher salesmen [fol. 1357] they do not work at the same time. You cannot take two buyers into a pen at the same time, no; but you could take two buyers and one will go into one pen with a buyer and another will go into another pen with a buyer. It is not safe to say that we would alternate, or that they would alternate. You couldn't even say that, because it might just happen to occur that one man would have a string of cattle down in his end of the alley and when the

other party below had finished with one, he had finished with this one that he had and he had grabbed the fellow first and say to you "Go along with that string." Outside of George Conover, I have two salesmen that came up through the ranks and one was a cattle buyer. Hatch was a cattle buyer for one of the smaller abattoirs here in Chicago, and the other one was at one time working for another commission firm as a salesman. None of these salesmen brought any business with them when I procurred them as salesmen. They were all practically yardmen; and grew up just in the livestock business. That is also true of my son George.

Our firm handles sheep. We have a sheep salesman, W. B. Burns. Eddie Schultz assists our sheep salesman as yardman and assistant sheep salesman. In cattle I think George and I sell the same number. Perhaps George sells a few more than I do now, but in the butcher alley, it is [fol. 1358] about equally divided between Hatch and Stewart. Tully sells all the bulls and all the calves. We have a little more steers than butcher stuff. We have one hog salesman and one assistant, who acts in the hog alley as Eddie Schultz does in the sheep. Sells about five per cent of the hogs.

George does a good deal of buying of stock cattle and I do some; Sam Savage does the most of the steer buying and Fred Hatch and Ed Stewart both buy heifers and light stuff that go back to the feed lot. Hatch and Savage buy most of the steers I would say. Mr. Hugill buys the hogs. And the sheep buyer is our sheep salesman.

Our sheep salesman sells some for other firms, but none of our cattle or hog salesmen do.

In case I had cattle owned by several different men in our pens at the same time, they might all be sold at one time but at different prices. Then they would be weighed in different drafts, the way they are sorted.

I am the active manader of the firm. Yes, we mad- some little reductions in our expenses since the year 1932. We did not reduce the salaries of salesmen; we let out one or two yardmen, we did not let out any salesmen. Either my son George or I hire or fire all of the employees.

[fol. 1359] In fixing your rates and charges, I do not believe that the draft should be taken as a basis rather than the carlot. I would say that maybe I didn't make it plain

before that I thought it requires one with greater experience and better judgment and much more dependent upon his ability as a salesman to sell a carload than it does to sell a parcel. As to whether it would be my view in fixing the schedule of rates and charges for the commission men. the best schedule should be based on the number of drafts or on a head basis or on a carlot basis, I don't know; it requires more time and all to sell parcels, but perhaps not as competent a man to sell parcels as it does straight carloads. As to whether in my judgment more time is required to sell a carlot to a single buyer than to sell a draft. or say, a small parcel to a single buyer; I do not know as it takes any more time to sell one cow than it does seven steers; I mean if the seven steers are all alike.

Mr. Miles (continuing): Based upon your own experience, how many parcels of cattle would you expect a man to sell in a day?

A. Well, I don't reach any expectancy about what I expect a man to do. It just depends on the condition of the market. If I can select the days to have a big string of cattle, you should sell a good many cattle.

Q. How many?

A. And, a day like yesterday, you cannot tell how many, but a day like yesterday it was pretty hard work to sell a few cars of cattle.

[fol. 1360] Q. At the present time, is it your view that all of your salesmen are efficient and qualified to handle the livestock that you permit them to sell?

A. I think so.

Q. You told Mr. Boyd, in substance, that you do not retain any more salesmen——

A. We don't retain what?

Q. Any more salesmen on your payroll than you think necessary.

A. No, sir.

Q. You have also told us that your volume had fallen off during the year 1933?

A. Yes, sir.?

Q. About how much, in your opinion, would your volume have to fall off before you would drop a cattle salesman?

A. Well, if it would drop off much more, I would have to do it.

Q. What do you mean by "much more?"

A. Well, if business don't pick up, which it might do before the end of the year, we might have a fuller business in the fall of the year, and you cannot go out and get a man that you have confidence in to handle your sales in a few days.

Q. Now, how much would your business have to increase before you would take on another salesman?

A. I don't know; I couldn't tell; that would just be a mere guess and it would not amount to anything.

Q. If you could be assured of an extra hundred carloads for the coming year, would you put on an extra salesman to handle that extra hundred?

[fol. 1361] A. No, sir, because I feel that we ought to be able, after handling it last year, maybe to get by; I would feel like we had slipped this year and that with the volume of business that we did last year we ought to be able to handle it with that amount of salesmen but if it warranted an additional salesman, I would try to get the right kind of a man if it was necessary in the conduct of the business.

Q. You handled more cattle last year than you have this year?

A. Yes, sir.

Q. That is based on the number of months that have elapsed?

A. Yes, sir.

Q. And, with the same number of salesmen, is that correct?

A. Yes, sir, but this year we have to cut them up more than we did last year so that really required all the efforts of the salesmen today.

Q. And you did handle them last year with the same number of salesmen?

A. We did handle them last year.

Q. There were some days, Mr. Conover, when your firm received no cattle at all by carlot?

A. About the only day is, practically, Saturday.

Q. And, on a Friday, just how will your salesmen be employed, will they go out soliciting, or just what?

A. Well, sometimes they go to the country to solicit business; not often, but a few days, perhaps; other days, they will have a couple of days rest, and I suppose there is more rest than there is soliciting in those two days.

[fol. 1362] Q. You have no idea what the peak business day has been for your firm this year?

A. No, sir, I don't; I don't know anything about what the peak days have been this year.

Q. And, on the peak days, your firm, with the present number of salesmen, will handle what comes, will they not? It is seldom that you hold over livestock?

A. Well, I would not say seldom; we occasionally do, and I could not say now, perhaps, in the butcher alley, I expect it will average one or two days a week, holding over butcher stuff, and in the steer alley not so often.

Redirect examination:

It is harder now to operate and manage a business than it has ever been in my forty odd years.

Mr. J. R. Clegg, a witness called by the Respondents, testified as follows:

Cross-examination:

Q. Now, you have told Mr. Wilson that if you had a small increase in your business, that you would have to have extra help, is that correct?

A. Yes, sir.

Q. What did you have in mind by saying "A small increase in business?"

A. Well, anything over the regular routine of work that we have.

Q. May I ask you if your firm received one carload of cattle per week more than they now receive, would you hire an extra salesman?

A. No, that would not be considered a small increase, that would be a very small increase.

[fol. 1363] Q. Well, then, will you differentiate for us the difference between "small" and very small?"

A. Yes.

Q. Just what did you have in mind by saying "small increase?"

A. Well, a small increase in the business would be a noticeable increase, something like a 10 or 15 per cent increase in receipts.

Q. I see, and if you had a 10 per cent increase, you believe you could get along with your same number of employees?

A. I don't think we could without hiring extra help.

Q. If you had nine per cent, do you believe you could get along with your present force?

A. I don't know whether we could or not. I have not figured it down like that.

Q. That is getting into the dividing line, is it?

A. I say I have never figured it down there.

Q. What kind of help would you employ, that is, for extra receipts?

A. Yard help, only.

Q. You would not increase your sales force?

A. No, we would not increase it unless there was an abundant increase in the business.

Q. All right, about how much, in your opinion would your cattle receipts have to increase before you would take on an extra cattle salesman?

A. I could not say as to that.

[fol. 1364] Q. You have told us that your salesmen could sell a lot more of cattle in 1923 than at the present time. What did you have in mind by saying "a lot more?"

A. Well, in 1923, we sold them in more on a wholesale order. We would sell a load of butcher stuff together or we would sell three, four, five or six loads of steers together, where now we have to sort, maybe the load of butcher stuff would have to be sold in eight or ten different lots and the steers would be sorted according to size.

Mr. J. C. Eastes, a witness called by the Respondents returned to the stand and testified as follows:

Direct examination:

I am making every possible effort to reduce our general expenses. It was necessary to reduce the salaries of our employees during the year 1932. We made a reduction of about 15 or 20 per cent. In 1933 I cut the salary of the office boy $7.50 a week and salesmen $15 a week. I would not think there has been any reduction in advertising expenses from 1933 over 1932. Up to this time there has

been a reduction in traveling expenses for 1933 over 1932. I devote my entire time to the management of our business at Chicago and the sale of sheep. We are called at all hours of the night to answer telegrams or talk to shippers that are in transit. The large percentage of our shipments are loaded one thousand or more miles away. They like to be advised from Ogden, Utah, Laramie, Wyoming, or Valley, Nebraska, at those points, where would be the best market to send their sheep, and the trains come in at all [fol. 1365] hours of the night and they often call or telegraph us to call them. Laramie is a feeding station or division point. We suggest diverting the shipments that are billed to Chicago to other markets when we think they will net the owner the most money, regardless of whether we have an office there or not. We have an office at Ogden, Denver and Omaha, but we sent stuff to St. Joseph, Sioux City, Kansas City or wherever we think it would net the shipper the most money. We get no commissions out of those places except where we have offices. We have a shipment now in transit that a man is going to call me tonight or tomorrow morning whether they should be sold in St. Paul or brought on to Chicago. The way the present markets are, I will have to advise them to sell them at St. Paul. If he accepts my advice we will not get any commission out of that consignment; but we hope to get some on future dates on some other shipments that he might come on with.

I don't see how we can cut our expenditures made for yarding sheep, if we could I would. The expenditures we made for selling are in no way wasteful or extravagant. We try not to spend an excessive amount of money soliciting business. In connection with advertising we try to be very conservative and when the shipping season is over, [fol. 1366] in certain localities, we usually take those names off our lists and drop them until the season next year. I do not know anything we could do to render our service more valuable and useful to our shippers.

Cross-examination:

It is hard to say what time I spend in soliciting business, because I spend quite a few afternoons and evenings going to the feedlots and then there are times off the year. I could not say exactly. We have feeding stations on rail-

roads near Chicago thirty to seventy miles out that we are often called out and go there to get consignments. It is hard to say. Some nights we go out there at six o'clock in the evening and the train won't get in until three o'clock in the morning. It is hard to say how much time. That is not counted under the rules of the Exchange on consigned business but is counted on unconsigned business. We sometimes go out to the feedlots to endeavor to get unconsigned business, and under those conditions the Exchange rules apply. I do not use all time for soliciting which is permitted. C. J. Davies is my assistant. He sells all kinds. He also solicits business. I do not know what proportion of his time he spends in soliciting, but we try to take up his sixty days' time if we can. He has been to Idaho, Wash-
[fol. 1367] ington, Montana, Wisconsin, Iowa and Illinois. Most of the trips that he has made west have been in June and July, I mean in the northwest. He has not made that trip, though, in two years. He has some clientele of his own in this way: he was head buyer for Armour for thirty years and he would naturally have some people that are acquainted with him. When he is not soliciting, he is on the market every day. I sell the greater part of the sheep for our firm. I should think I would sell 60 to 75 per cent, I could not say. He sells all classes and grades of sheep. During the range season it is generally understood that I sell the range sheep or lambs and he sells the natives. At other seasons of the year, as a rule, I sell the fed westerns and he the natives, but in those days we advise with one another. I advise with him if he sells the natives or if I am selling them he advises me, and we work together. He might make a sale that I had been working on for two hours. Mr. Davies does some yard work. Yarding sheep, sorting, we all do that. I do that too. Mr. Davies does very little office work with the exception of letter writing. Writing letters is the only office work I do.

I usually try to get to the office between seven and eight and leave some days, it is early, and some days it is late, as late as nine o'clock, and sometimes I leave at two or three. Our firm sells sheep for other firms. For Lawler, and
[fol. 1368] Drovers, and Ingwersen Mosier and Ingwersen. For them we perform the same service as we would on sheep consigned to ourselves. I have reference to the work

in the yards only. The basis of compensation is fifty per cent. That is the basis regardless of how they arrive.

We discharged the yard man by the name of Barr last December and have not replaced him. Outside of Mr. Barr there has been no change in the personnel of our firm in 1933 as compared to 1932, except that I let the office boy go, but we have him back now. He was away, I think six weeks. In 1931 I think we had the same personnel. I am not positive. Very little change if any. Part of that year young Desmond that is now in the West, he might have worked for us, I don't know whether he was in this office then or not, I could not say, part of 1931.

Our firm does not do any loan business.

In a general way I have a part to play in the management of the other houses. I don't interfere with any salesmen they would put on in Omaha or any office force, but with Denver I would consult with my partner and at Ogden I consult with my partner. We have branches at those other three markets. We have no head house. We would fill orders to buy sheep for the firms that we sell for on half commission.

[fol. 1369] In 1932 we have an item of good will payments of $1200. That is to Mrs. W. R. Smith. We still pay her $100 a month. When her husband died she had an interest in the business. We have paid her a stipulated sum for that name. She could have taken the name away from us, or I suppose she could have. Her son is my partner. We have been making those payments since his death, I have forgotten whether it is six or seven years. As to how long they will continue, there is nothing said about it, as long as she has no other support. I think we have borrowed $2100 from her or something like that, I have forgotten just the amount. We pay her four per cent interest.

I try to go to Denver and Ogden once a year; I make those trips in connection with trips in the solicitation or conventions or something of that kind. If we can save railroad fare, my partner goes; he can go cheaper than I can from here and he makes more trips than I do.

There is a difference in the work required in the selling of a single deck of sheep compared to the selling of a double deck. It takes a longer time to examine them—the double deck. You cannot tell a load of lambs by looking

at one or twenty or fifty of them; you have to go over the whole outfit and probably in a double deck there will be twice as many owners as in a single deck. They will be [fol. 1370] maybe mixed sheep and lambs that have to be sorted and it takes twice as long to run a double deck through a chute as it would a single deck. Sorting would take most of the time, the weighing and sorting. With reference to the selling it takes more time to sell a double deck of sheep, I don't mean any one individual load, but I mean in general. I would not think it would take twice as long to perform the necessary sorting, selling and weighing on a double deck as on a single deck. It is owing to how badly mixed they were. You cannot base it on a general proposition; one load might have twenty different kinds in the double deck, and the next double deck might be all one kind, I do not know; I could not say. There is a large part of the sorting that is done before the sale. We often show lambs that we think we can sell with little sorting. We find out we cannot and we will take them over and sort them and reshape them and put them in better selling condition and put them back on the market, but I would say most of the sorting on mixed lots is done before we show them to make them look better. Years ago, we sold them all together, old ewes, young ones and all. I call a mixed lot where there are old ewes, yearlings, bucks, lambs, feeding lambs, breeding ewes, of all ages, and lambs of all qualities, killers, whatever it might be.

[fol. 1371] In connection with fat lambs, we often sell them with 10 per cent out or 25 head out or whatever the trade is made and then they are sorted after that. In the case of slaughter lambs, I would say that most of the sorting is done after the sale is made.

Mr. B. R. Hugill, a witness, called by the Respondents, testified as follows:

Cross-examination:

I sell about 75 per cent of the hogs received by my firm, Alexander, Conover and Company.

S. Bruce Stafford, a witness called by the Respondents testified as follows:

Direct examination:

I live at 9255 South Winchester, Chicago. I am the sole owner of Stafford Brothers. Stafford Brothers was first organized before I came. I came in 1887 and before that it was J. E. Stafford and Company. J. E. Stafford was an older brother; he passed away long ago. The firm has been in business at least fifty years. During that time we have handled cattle, hogs and sheep on commission. I have been, at various times, director, vice-president, and president of The Chicago Live Stock Exchange. I was president for three years within the last ten years; no, it was about eleven years ago I finished my last term.

[fol. 1372] We draw the major portion of our business from Iowa and Illinois. And the same with reference to hogs. We get scattered shipments from as far south as Mississippi, Kansas and Montana on the west. I have sold steers during the last ten years.

We have two salesmen selling cattle besides myself. One man sells she-stock; the other one assists me in the selling of steers. We have only one hog salesman at the present time. We have five yardmen, three working on cattle.

Mr. Otto, cattle salesman, has been with us at least thirty-five years, possibly two or three years longer than than. Mr. Ward has been with me seventeen years. Mr. Grant our hog salesman came with us at the close of 1931. We employed Mr. Grant to fill Mr. Jack's position as hog salesman. Ray Sarsfield is not with us now, we only use a man in his place as an extra man when we need him badly.

The business of Stafford Brothers was more profitable in 1932 than in 1931, although the difference was small. The gross commissions were less than $1,000 difference in the two years. The buying commissions were smaller in 1932 than 1931, the difference less than a thousand dollars. The amount of income from clearing other firms was greater in 1932 than it was in 1931.

[fol. 1373] We did not change any salaries in 1931, 1932 or 1933. The amount of time I put in as a salesman varies with the amount of cattle I have to sell, but I am usually outside until the market closes unless I have finished a

short time before that. I devote ten or twelve hours a day, commencing at half past six in the morning. It would vary according to the amount of live stock we have to sell or the market conditions under which we sell them; largely the market conditions. The entire management of the firm is my responsibility. I am always trying to get more business, increase it. I do all the soliciting for our firm in company with Mr. Ward. I decide when Mr. Ward will spend money for the purpose of going to the country. He goes with me to the country. He drives the car for me when I go. Our soliciting in the country is largely at the request of our friends that have livestock to market, and the trips are made at their request. While on that sort of a trip, we also solicit business from people who have livestock to be marketed. It would be impossible to separate the time devoted to actual appraisal or the trips to persons having livestock where there is a specific request to do so, and the time that we use in calling upon other persons living in the community. In the first instance, the trip is made necessary by request from patrons. I cannot respond to all those requests but I go as often as I can.

[fol. 1374] Q. During the year of 1932, the cattle sold by Stafford Brothers, arriving in straight cars, single ownership, numbered 13,211. They were from 422 owners and necessitated 1483 account sales, an average of less than ten to the draft, and the business fluctuated from 2002 head in November to 534 head in June. In your plural ownership, straight cars, they had 2080 head with 492 drafts, average of about four head per draft. Carloads of cattle and calves, which is called Mixed No. 1, had no other kinds of livestock in it; you had 3,700 head of cattle with 950 drafts, an average of less than 4 head per draft. You had 724 head of calves, necessitating 241 drafts, about 3 head per draft; that was single ownership. And, in plural ownership, you had 3510 head with 1283 drafts, less than 3 head per draft; and, in calves, you had 744 with 464 drafts, which was less than 2 per draft. During October, you had three single deck and one double deck of No. 2 Mixed, single ownership, which means cattle and calves, hogs and sheep in the same car, which contained 4 cattle, necessitating 2 drafts, 19 calves necessitating 6 drafts, 248 hogs necessitating 16 drafts and 73 sheep necessitating 7 drafts.

No. 2 Mixed, plural ownership, during the month of August, you had 7 single decks and 2 doubles, containing 39 head of cattle from nine owners with 14 drafts, 63 head of calves from 17 owners with 18 drafts, 564 hogs from 64 owners with 107 drafts, 76 sheep from 11 owners with 23 drafts. In the case of drive-ins for the entire year, you had 4610 head of cattle from 1,030 owners with 1,882 drafts, a little over 2 head of cattle per draft. You had 1,225 head of calves from 490 owners with 788 drafts, less than 2 head per draft. You had 15,402 hogs from 1,104 owners with 2,356 drafts, a little over 6, less than 7 head per draft. Speculator business, you sold 827 head from 163 owners with 227 drafts, which was less than 4 head per draft. In the case of calves, you had 34 head all year sold in 12 drafts for 10 owners, less than 3 head per draft; and 6,142 hogs from 163 owners, 216 drafts, averaging [fol. 1375] about 30 head per draft. Do you think that is typical of the way the business of your firm arrived during the year 1932?

A. Yes.

Q. And describes the conditions of mixtures which you indicate have increased during the past several years?

A. They have increased, yes.

Q. Does that necessitate more or less salesmanship effort and time?

A. More time and more salesmanship, naturally.

Q. Have you ever known a time in this business that was as hazardous as the present for an owner to conduct the business at Chicago?

A. There never has been a time as hazardous as it is now.

We try to get our business into the market as evenly throughout the months as is possible. We try to get and solicit business for what we believe will be our light months. We must maintain a force sufficient to handle what we think has been a maximum requirement. We have no requirements as to the number of carloads that our employees will handle. The volume of business which may be handled by a salesman depends upon market conditions, as well as the number of loads that we have, depends on how much help we need, salesmen we need. By that I mean the number of sales that are necessary to be made by salesmen, together with market conditions. The effort per car-

load in rail business and the time necessary has increased [fol. 1376] over the conditions that existed in selling in past times; it is altogether a different proposition now, and that condition gets worse as time goes on, in my judgment.

The ability of a salesman to sell has been changed to the determination of how many different small lots he can peddle, that is the condition now; that applies to the steer business as well as to the butcher business.

Cross-examination:

When I go to the country personally and talk to a shipper, I tell him I think I can get as much for them as any other competitor here, and I boost the Chicago yards as being the best terminal market in the country. There is always a market, for any livestock that they may send to the Chicago yards, and I believe that to be true. I believe the Chicago market could absorb more livestock than it is now receiving. I could not give you any idea as to how much more by percentage, only by going back to the old days. We could absorb as much as we did if we had the old competition. We could handle more business. With my particular firm, we would put on extra help if we had more business. We could handle more cattle than we are now handling with the same force. I cannot give you an idea of about how many more. Our firm in my opinion can handle more hogs than we are now handling with the same force.

[fol. 1377] I could not give you a percentage in that case. The three salesmen including myself sell the livestock for Stafford Brothers and the firms that we clear. We have one hog salesman, No. 5, shown as a hog salesman, but he has been physically unable to sell hogs or to do anything else for the past two years. His salary is shown on the blue audit, you might call it in a way, a pension. He did no selling during 1932 or 1933. One salesman did all the selling of the hogs for both years. No. 5 was taken sick some time in 1931. I don't just know when. It is true that consignments now come to us in smaller lots than formerly. You could go back ten years and it has been increasing yearly. I would say in 1923 they came more to an owner than they do now. It would be hard to answer as to percentage. We very frequently had a hundred head

of cattle in one consignment in 1923, and it is very seldom that we get that many now. It happens occasionally. You could possibly sell that many cattle in 1923 in an hour and now you might not sell them in 24 hours of two days. I think it would take more than three times as long to sell one hundred head today of cattle than it did in 1923, day in and day out. Four or five times as long. In 1923 we began to sell cattle very frequently at eight o'clock in the morning. Nowadays we begin whenever they will bid us [fol. 1378] or try to buy them, but is is usually eleven or twelve or one o'clock. Our market hours are whenever they start, whenever they will bid. There is no rule of the Exchange of the Stockyards Company that selling shall not commence until a certain time, not to my knowledge. We could not, if the buyers wanted to do it, and would go to our pens, begin actual selling at six o'clock in the morning, because we have not the cattle ready to sell at that time. That is the only objection.

We do not make many sales at ten o'clock in the morning. We do make some. They are made to order buyers and shippers. Traders begin buying early in the morning. Traders and order buyers will begin to buy as soon as they did in 1923. Only the packer buyers refrain from buying until around noontime. Largely all of our sales are made to packer buyers, the greater part of them I would say. I think fully eighty per cent of all of our cattle would be sold to packer buyers; I think fully that many, that great a per cent.

In 1923 we finished selling depending on the arrival of the cattle. We must prepare these cattle for sale. In 1923 they arrived at twelve, one or two o'clock in the afternoon, but we could not sell after three o'clock, but we would be on the yards trying to sell up until three o'clock. That is true today, but we must stop at three o'clock whether we [fol. 1379] have sold out or not. We occasionally hold over cattle. I could not tell you how often. I held over one load last week, that is about an average, yes, more than an average. Shippers usually leave it to our judgment largely. In the case last week the shipper last week asked me to hold over. Sometimes we hold them over when we feel we are not getting their value. In that case we could have sold them had we been willing to take the price offered, and the reason we did not sell them was due

wholly to the price. Usually we get better results, and it sometimes happens that we get worse results. Ten cents per hundredweight would cover the cost of carrying cattle over. We make an attempt to sell cattle the day we receive them unless we are instructed to the contrary.

There were more commission firms on the market in 1923 than in 1933. There were more employees in 1923 than today. The Chicago market is slipping, in my opinion. It is because of the conditions. I do not think that is due to the depression now existing. It will continue if they continue to buy direct in the country. And I think if buying is continued in the country, it will continue to slip, beyond a doubt.

My testimony was that it takes more sales today to sell a given number of livestock than formerly. We eventually [fol. 1380] sell all that we do receive, and that means that we work more hours in actual selling than we did formerly. I have also said there are more hazards at present to the owner of a commission firm than formerly. The country banks situation is one hazard. I mean that the bank may close after you have sent your remittance. The shipper usually requests his remittance by check these days. We draw the checks on either of the two banks at the stockyards, and we would send the check to the shipper. In the recent closing of this bank here, we had about $6,000 out in checks and we made them all good before this bank opened. We did not sustain a loss because the bank finally opened.

Q. In case the country shipper had a check on a bank that was absolutely solvent and good at the time he received it, and held that check for a month, and at the end of the month the bank closed, in those circumstances would you feel that your firm was responsible for that bank?

A. Morally, yes.

Q. And would you pay that debt if you were able to?

A. We would.

We feel like taking care of our friends when we can and regard the making of loans as being part of a commission business. We do not file any schedule of rates and charges with the Department of Agriculture covering loans. I [fol. 1381] don't suppose it is legally a part of the commission man's business. It would be a haazrd of a some-

what allied business. We make sales to different buyers that we are not quite sure we are going to get our money or not. That would be some order buyers and some small packers. The order buyers are supposed to be under bond to pay for their purchases. We sold to one yard trader that was under bond and his bond did not cover his obligations that day, so we had a loss. You cannot make any checks to determine whether the bonds do cover transactions, because you do not know how many he has bought that day. We knew in that particular instance the man was under a ten thousand dollar bond but we did not know he had bought twenty thousand dollars worth of stuff. In that case we sustained a loss of around one thousand dollars. As to whether I regard it as being a legal obligation upon me when we sell live stock for a shipper to make up for any loss that may be sustained; we always have and I think we are morally bound. We are supposed to know our men and make good, that is what they pay us our commission for. There is no custom on the yards to sell on credit. The rule is that we must pay by 11 o'clock the following day, or we must be paid by eleven o'clock the following day. I think the shippers are not familiar with that custom or that rule.

[fol. 1382] Redirect examination:

I have no way of limiting the liability of S. Bruce Stafford for any hazard that might arise that I know nothing about at the moment. My entire possessions are back of my business at the stockyards. We are under $28,000 bond and that was reduced because of the lower value of livestock from $45,000.00.

We must be absolutely broke before the bonding company will pay a cent. If the bonding company pays, if I have any assets, they will take them, and it must be plenty of hazard there because the bond has been raised from $3.00 per thousand to $10.00 per thousand. We must pay as long as we have anything to pay. In many instances bonding company requires collateral to the amount of the bond. The bond as a matter of fact does not protect me at all but actually protects the customer in case of default on my part.

We sold two loads of cattle for a man in Wisconsin last fall and he had the entire proceeds split up into $500 checks.

He said, "I will use them as I need them." There were at least two of those still in his hands when this bank closed for thirty or forty days or two months. He waited until the bank opened but others did not. The discount would not average a half of one percent on cattle paper handled [fol. 1383] by me; and possibly would not cover the actual cost to me of making a loan. Making loans on cattle is unprofitable.

Mr. William M. Gentleman, a witness called by the Respondents, testified as follows:

Direct examination:

I live near Crown Point, Indiana. I am a partner of William Gentlemen and Sons. There are five partners, my father and four brothers. I sell steer cattle. Father is the senior member of the firm and we have to give him the position as general manager, but we all participate in doing it.

William Sr. is the general manager, C. F., cattle salesman, A. M., hog salesman; and F. J., a cattle salesman.

Outside of the owners we employ only one salesman, Charley Mallory.

Of the total expense in 1932, four-sevenths represents the owners' compensation.

The cattle business of our firm is handled by three cattle salesmen, myself and two brothers, I handle the steer cattle and C. F. Gentleman handles the cows, bulls and calves; G. J. Gentleman handles the heifers and the light weight yearlings such as the heifer buyers buy, but at times we [fol. 1384] all assist one another whenever we are needed. Each one knows every day what the other one is doing and can assist at any time. I sell the steers generally from day to day.

William Gentleman and Sons have been in business since 1908. My father has been in the commission business since 1883 at Chicago continuously. In 1883 my father was with the firm of George Adams and Burke. He was with them from 1883 to 1894. He was with Shannon Brothers from 1894 to 1908, at which time he started William Gentleman and Sons. I was with Shannon Brothers prior to 1908; from 1899 to 1908. I started in as a yard man, later sold

hogs and sold hogs up until 1908. I started selling cattle in 1910, and I sold all our cattle from 1910 to 1921 or 1922, if I remember right. I was the only cattle salesman. That might be some slight exaggeration, my brothers were working in on them. Of course, they had the experience from the time the firm started, but they assisted me at times, but I was the main cattle salesman up until that time.

Since then the work got so complicated along about that time we had to divide it up. I could not handle it any longer the way I had been handling it. There are three of us selling cattle now, which I was able to do along in 1921 and 1922. A great many days I had more cattle to sell than we [fol. 1385] do now. I cannot say what the aggregate was, but a great many days I did. I could not handle it now. Where we used to have straight loads of stock, they started coming in divided up more. Before the co-operatives started lots of the farmers clubbed together and made up loads and then later on they developed into these co-operative associations that developed throughout the country and they have increased very rapidly. Then, whereas we had buyers who had greater orders, I could take a cow buyer into my alley and I might be able to sell him every cow I had in the alley. The same with steers. Well, then the packer buyers generally started to have their orders cut up. A buyer would come in and he would buy eight or ten cows of one kind and half a dozen of another and then he would be through, and you would have to get other buyers in order to complete your sales, and the grading of the different kinds of cattle became more pronounced. Where they used to buy them in two or three grades, they have inaugurated several grades. I could not tell you how many, there is so many of them. And where I would sell, as I say, one load of cattle to maybe one, two or three buyers, now, I might sell them to as many as ten or twelve or even more than that, that is, in order to effect a sale properly. And again you try to sell mixed loads of cattle now, you will not get the competition, as the buyers have [fol. 1386] all got orders for certain grades and if they go into a load of cattle and they do not generally meet the grades they want, they don't bid on it.

Q. Your commissions from single ownership cattle, arriving in straight cars, by months varied during the year 1932 from a high of $2,910.80 to as low as $1,006.73. Your

high month was October; your low month was March; August was your next highest month of $2,400.

A. When was that, 1932?

Q. Yes, and for the entire year, you had 26,790 cattle of that kind arriving that way with 5,349 drafts, which would be just about 5 head per draft. In other words, if you had a car with 20 head in it, it would require four drafts to sell it.

A. We get a great deal of this mixed truck stuff.

Q. This is only carload stuff.

A. Carload stuff?

Q. In single ownership.

A. Yes, we get a lot of steers that come mixed and require a great deal of sorting and grading.

Q. Now, in the case of plural ownerships in straight cars, you had 3,249 head from 336 owners with 1,135 drafts. That would be about 3 head to the draft. That is, you understand, straight cars, plural ownerships?

A. Yes.

Q. You had 124 cars of that kind of business, as it is set down here, for 3,249 head, an average of 25 head of cattle to the car, and, in order to sell a carload of that kind of stuff, you had to make 8 sales. Let me ask you, do you sell cattle of plural ownership or livestock belonging to two owners in the same sale or do you sell it on its own merit?

[fol. 1387] A. As a general rule, sell it on its own merits; once in a while, if there happens to be just two the same or three about the same, you might sell them together.

Q. Would you consider that a usual or an unusual occurrence?

A. Well, it is more unusual than anything else. As a rule we sell each man's separate, as the owner demands it, unless that would be an odd head or something like that.

We sell each owner's on its own merits and it necessitates a great many sales, and, as rule, that stuff is uneven in grading and we have to grade it. In the case of cattle and calves only, my brother C. F. Gentleman would sell the calves, and in the case of a car containing cows and steers and calves, he would sell the cows and calves and I would sell the steers. And if the car contained fat heifers, all three of us would sell them. We do have such loads.

Q. In the case of No. 1 Mixed carloads that contain cattle and calves only, where each car will have some calves and some cattle but no other kinds of livestock, during the entire year, you had 246 carloads with 7082 head of cattle from 103 owners with 2,274 drafts, a little over three head to the draft. In the case of calves that were contained in those cars, you had 1167, same number of owners, with 416 drafts, less than 3 head to the draft. In plural ownerships, cattle and calves only, you had 91 carloads, 2231 head of cattle, 423 owners with 1166 drafts a little less than 2 head per draft. You had 641 head of calves from 253 owners with 348 drafts, less than 2 head per draft. Now, in the case of a mixed car, No. 2, containing all mixtures, including cattle and calves, it may be necessary to use all your salesmen in order to sell the contents of one carload?

[fol. 1388] A. Yes, sir.

Q. And, if the car contained sheep, you would have to turn them over to the person who sells your sheep?

A. Yes, sir.

Q. In the case of single ownership, Mixed No. 2, that is all kinds, you had 278 cattle arriving in 25 single decks, 5 double decks, of course, no cattle arrive in double decks.

A. No.

Q. There were 278 head of cattle from 10 owners with 77 drafts; that is less than 4 head per draft. In 49 calves with 17 drafts, a little over 3 head per draft; you had 1176 hogs with 68 drafts, a little less than 20 head, and you had 172 head of sheep in 12 drafts, about 15 head per draft. In the case of plural ownerships, all mixtures, you had 1118 head of cattle in 747 drafts, considerably less than 2 head per draft. You had 1049 head of calves in those cars with 574 drafts, less than 2 per draft. The hogs in those cars were 7602 head with 1796 drafts, less than 4 head per draft. In the case of single ownership compared with plural ownership in hogs, where you had less than 20 in the single ownership, you had less than 4 in the plural ownership. In the case of your drive-ins, the work papers show you had an average commission income of 89 cents a head on all cattle that arrived by truck. There were 9052 head in 2191 owners, sold in 4350 drafts, a little over 2 head per draft. In the case of calves, you had driven-in 1,662 head with 1156 drafts, less than 2 per draft. In the case of hogs, you had 32,739 head from 2,438 owners with 4,589 drafts, about

7 head to the draft. The work papers show that there was an average income of 29.4 cents per head commission average collected on that business.

Are they the mixtures that you have described as occurring now that did not occur to the same extent in 1923?

A. Yes, sir.

That illustrates the necessity for having as many cattle salesmen as we do to handle the business we receive. Look-
[fol. 1389] ing at it from a service standpoint, that is the way we look at it, we have got to have the salesmen in order to give the service. There is none of it weighed separate or graded separate unless we have to. We make as little work out of it as we possibly can in order to handle it efficiently. You see, a great deal of our business is local business and that is what brings in a lot of this odd stuff, you know, and we are not like those Western fellows, they have bigger bunches.

The western fellows do not have their business come in as many odd lots as we get ours in, except in the case of estrays.

Q. Do you find that your receipts by rail are decreasing and your truck arrivals are increasing?

A. That is the way it appears to me, considerably.

Q. During the year 1931 you had 87,994 head of livestock in straight cars, cattle and calves, and hogs and sheep. During 1932 you had 67,581, or a loss of 20,000 head. In the case of No. 1 mixed, cattle and calves, you had 6,559 head, and in 1932 you had 11,121, nearly twice as many in 1932 as in 1931. In mixed cars No. 2, all mixtures, you had 19,537 head, while in 1932 you had 11,815 head, almost half as many. Your truck-ins in 1931 were 38,269 head and in 1932 you had 47,386 head. In seconds you had 28,887 in 1931, and in 1932, 8069 head, or a loss of 20,000 head. The type of business that is easier to handle from a salesmanship standpoint decreased and the type of business that causes a salesman greater difficulty increased?

A. Yes, sir.

[fol. 1390] Q. I will ask you to look at the detail of income and expenses, profit and loss, for the two years, and indicate what items you believe to have been ill-advised, unnecessary, or extravagant, in your opinion?

(Witness examines exhibit.)

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A. Well, I don't see any on there, only that insurance and business, I never could see that. We have to carry that mortgage and theft insurance, and we have to carry the compensation, at least we have carried it. That is the only things I can see on there I would like to get rid of.

Mr. A. M. Gentleman sells more of the hogs received by the firm than Mr. Mallory does.

As to what class of salesmen are regarded as being the highest class salesmen on the yards, cattle, hogs and sheep, they all think they are the highest class. I would not say that it was true that steer salesmen are generally recognized as the highest class salesmen on the yards. I don't believe that is true. As to whether an efficient hog salesman is entitled to as much salary as an efficient steer salesman, it all depends on how much he has to do. In the case of our partnership, we all divide the business equally.

The way I find it there are a great many times I have to put in a great deal more work on a carload lot than I would on some drafts, but generally where you have a great many drafts, that means a great deal more work and a great deal more selling, of course. I would favor a head [fol. 1391] rate rather than a carlot or a draft. I told on direct examination in substance that I had a loss of business. That our receipts had fallen off. I cannot answer whether they have fallen off any more than the total shipments to the stockyards.

Any one of our salesmen will buy cattle on order. As a rule we aim to let the salesman buy the kind of cattle they are selling.

J. L. Farren who sells our sheep is not a regular employee of our concern. He is the man to whom we turn our sheep over for sale if we have any.

Recross-examination:

Q. Now, assume that you are still taking the head rate, that 20 fat steers came in in one carload, then let us assume that in another carlot there would be let us call it 15 fat steers and 5 calves. Would you feel that there should be a different rate there in the total amount.

A. If the 15 fat steers were in a car and 5 calves, you mean should we charge a straight carload rate, is that what you mean?

Q. No, based on the head rate. Would you feel that you should charge more for steers or for 15 steers and 5 calves than you would just the 20 steers?

A. No, I wouldn't say so, no.

Q. But you have no idea in mind at the present time of what percentages might apply?

A. No, I never thought of that.

Q. Based on the head rate?

[fol. 1392] A. I always felt that our commissions were in line with the way they are now, and I just let it go at that and I never gave it any thought.

My father does no selling now.

Mr. Ralph E. Gillogly, a witness called by the Respondents, testified as follows:

I live at 2226 East 70th Place, Chicago. I am in the commission business and a hog salesman for Gillogly and Company. Am one of the partners in the firm. For the last twenty years I have been selling hogs principally for the same firm. I handle all classes of hogs.

Our consignments come chiefly from Iowa, Illinois, Wisconsin, Minnesota, Dakota, Indiana, and a few from Missouri and occasionally some from Ohio. I have a man with me that has a membership in the Exchange and can sell hogs, and I have generally two other yardmen, including the man that has a membership. At times he assists in selling hogs.

Hogs are coming in smaller lots, different ownerships; each of them have perhaps a few good hogs, and probably a few packing hogs and a few governments or something like that. It is our practice to sell each man's hogs on its own merits. It is necessary to sell each grade separately. That means that in a day's work I have an awful lot of work to do in selling the different lots and different shipments; it takes, requires a lot of sorting and a lot of buyers and a lot of extra work. We have to sort these hogs [fol. 1393] for ownership in many cases. And after having sorted them for ownership, we must sort them again for grades.

I am one of the partners of Gillogly and Company and I participate in the management of that firm.

The firm is making no wasteful or extravagant expenditures in its office operations. We are making no wasteful or extravagant expenditures in office supplies.

We are making no wasteful or extravagant expenditures for yard services. We are making no wasteful or extravagant expenditures for selling services. I don't think we are making any wasteful or excessive expenditures for getting new business, or wasteful or extensive trips to the country. I doubt if we did not make reasonable expenditure for advertising purposes, whether we could keep our business at its present volume. I have not been in the country on a soliciting trip for five or six years. Other members of the firm go to the country. They go out and sometimes to solicit new business, often times to go out to appraise livestock on request from the country. We try to comply with the requests we get to come to the country to see livestock but we are not always able to go. We do not often send representatives through the country seeking new business, but we do occasionally send out a man [fol. 1394] in a new territory where we have never been acquainted. That is not usual or often. Our firm does not engage in any race with anyone to take business away from any other Chicago market agency to my knowledge. I have not observed any such race.

I do not know how many hogs I can sell next Monday. I can tell by looking at a load of hogs about what price I would expect to get for them on the market. I cannot say that I can go into a load of hogs, take a careful look at them and then determine how long it will take me to sell them. It would depend on the market. Most of the time but not every day we sell all the hogs we receive that day. Sometimes we hold them over because we cannot get a bid on them. I held hogs over this week. I had one heavy load of butcher hogs Monday and never had a bid on them. I sold them on Tuesday.

Cross-examination:

We have practically the same organization now that we had in 1932. I think we have hired another man in the office since 1932, recently. I hope it will be a permanent man. He works in the office doing book work. We generally have two yardmen in the alley as permanent employees. One of them has been there about ten years and the other has been

there perhaps five or six. I sell most of the hogs for our firm. Not always all of them. In 1932 I would [fol. 1395] not know what percentage I sold, but the largest part of them are sold by me, a very small percentage sold by anybody else. I would think I would sell around 90 per cent.

I have charge of the hog department, practically anything pertaining to the hog department, and I help and oversee a lot of the office work. Occasionally on real busy days I do some of the office work myself. Some of the problems that arise in the office requiring my supervision and attention are seeing that the account sales are made up properly and seeing that the yardmen have the proper tickets for the proper men, writing the letters, taking care of the correspondence, general office work of that kind, everything that pertains to the shipment of hogs. I look over all the account sales before they are sent out. I keep in contact with my shippers just by correspondence. We send a circular practically every week. They all get circulars, all our regular customers, each week, and occasionally I write a letter besides that, and of course, on every shipment I write whenever they have a shipment.

The reason it is harder to make each sale now than it was five years ago; well, the demand is narrower, for one reason, and the buyers have been very bearish in the last year or so, and it takes more work to get an agreement out of them what the price should be on the lot of hogs, to get [fol. 1396] what you think is the proper value. I think we have to show them to more buyers than we did then. I think that the chief difference in conditions as they exist now and as they existed five years ago is that it is later in the day when we get our sales made. I think that because the packers are not as large buyers on the market at present as they used to be. They used to have larger orders and buy a more varied class of hogs.

Of course, the number we have to sell would also have something to do with it. On present markets you couldn't sell very many more than you can sell, like right at present if you had a larger supply, it would still be harder.

I have never figured out what percentage of our commissions I think we could afford to expend in advertising and other business-getting efforts. I don't know just what percent, but it would be a small percentage. I have no definite

figure in mind. I know that our customers consign their livestock at times to other firms on this market. I have been told that they have been out to see our customers, even other firms have told me that they have called on customers of ours.

[fol. 1397] I could not answer how much business direct buying has taken away from our firm. It would be a fairly reasonable amount. In some localities we do not get hogs at all where we used to get a good many. Not very much of it has been replaced by new business which we have been able to acquire We try to get new business at all times.

Q. * * * I would like to ask you whether, in your practice as a salesman, you hold your hogs until you think all the hog buyers in the yards have come through your alleys and looked at the hogs, if they are interested, or just how does that thing work out?

A. Well, it depends altogether on the class of hogs they are buying. If I know a man wants a certain grade of hogs, I will take him in and show them to him and if he bids me what I think they are worth, I will sell them to him. Other days there might be other grades of hogs and I might have to show six or eight different buyers before I get what I determined the market price for them, so that the different days vary together with the different grades of hogs you have.

Armour, Swift and Wilson, I think each have a buyer in each division, while the other packers do not all have one buyer in each division. As to how fast buyers move along, depends altogether on their orders I think; if they have an order to get a fairly large number of hogs, they move rapidly. If they have a bearish market, they do not. I consum-[fol. 1398] mate sales as fast as I can. Oftentimes we will find buyers that have short orders and they are all working at the same time and you have to work fast at that time, or again it might be that they are dragging out all day long, and if there is a broad demand, they might take the hogs two or three hours after they bid on them if they have a big order, if there is a broad demand.

Most days I eventually sell out before the day is over.

MR. A. M. GENTLEMAN, a witness, called by the Respondents, testified as follows:

Direct examination:

I came to the stockyards when I was 17 years old. I worked two years in the sheep house and then I came over into the hog house and I have been in the hog house for thirty years. I have been selling hogs for about 25 years, have had full charge of the hog department for 25 years. I am one of the partners of William Gentleman and Sons. It is necessary to make a greater number of sales in handling the carload business which reaches us than it did five or ten years ago; the trade now demands the stuff to be graded, and, therefore, you have to sort very closely. It [fol. 1399] is not possible to sell otherwise than to sort closely as the business has been converted from rail to truck, and I find that there are a great many more small shipments per owner sold than when the business formerly came by rail. It takes a greater length of time and a larger number of sales.

In the last five years, putting it mildly, I would say that the competition, there is practically none whatsoever outside of a few eastern shippers and up until three or four weeks ago there were very few of them.

I think the commission rates for selling hogs should be increased; because there is more work, and a whole lot more work now than it used to be. You take seven or eight or nine years ago, you could sell a whole train of hogs with less trouble than you can now sell eight or ten truckloads, with more help to take care of them, these little bunches come in trucks and you have to establish their identity all the way through and that takes time and it takes a lot of help to do it.

The persons who are employed in the sale of hogs for William Gentleman and Sons are fully occupied during the market hours of the day. Outside of Saturdays, it is true [fol. 1400] of most market days of the year. Saturday is practically no market at all, practically no stuff comes in, but we hold ourselves in readiness to sell what we do receive, and of course, there is always plenty of business in the office to take care of on Saturday, getting the books balanced and stuff like that.

I devote a part of my time to rendering advice and counsel to the other members of the firm with reference to policies; we consult one another. We mutually agree as to the amount of solicitation which should be done. From time to time we take up solicitation as it comes in.

We solicit our hog business nearly all by personal contact. Some letter writing, nearly all by personal contact. It costs a whole lot more to get business now than it used to. That is because of direct buying. The direct buying is difficult to solicit against, but it is necessary to do it in order to maintain our business. The prices we help to make as salesmen are prices which are used as a basis for the purchases made in the country.

Cross-examination:

My father is directly responsible for the management of our firm. He directs all the inside operations. The outside is taken care of by the individual partners. I have charge of the hog department. I sell practically 85 per cent of the hogs and have charge of the letter writing. I write [fol. 1401] letters just to custmers who ship hogs to our firm. Mr. Mallory writes some of the hog letters and the other boys take care of the cattle end of it.

I am familiar with the duties performed by my father in inside work. He takes care of all the financial end of it. That involves taking care of drafts and such stuff as that. He does not make up account sales. We have made it a plan never to pay any draft until the stuff is here to meet it, and when a draft comes in, we are pretty sure that the stuff is going to meet it before we pay it. Quite a few of our customers draw drafts in advance of the sale. We never pay them until the stuff is here to meet them and know that they are going to meet it. Of course, if we figure they are $25 or $50 short and it is a good customer, we pay it, but not otherwise. We got burned once and we don't want to get burned again. We draw back on them for the overdraft. He signs nearly all the checks when he is there. He spends all of his time in the office. He is in the yards from six in the morning until five at night. He comes down at six in the morning, he is in front of the building every morning at that time.

Where we have two or three cars of hogs that we cannot sell, we just work them until we can sell them, and we

usually sell them on the same day we receive them, if we can. That situation would arise because the hogs were of [fol. 1402] some peculiar class or grade for which there was little demand. It happens frequently. We eventually dispose of them by working on them until we can effect a sale. It sometimes happens when that situation arises that we have to take a less price than expected. I find that there is a demand or outlet for practically all hogs that we receive at some price.

On soliciting trips we go out and get in personal touch with the people in the country. Sometimes we go on request and sometimes on our own initiative. That is a matter of calling on the individual and asking him to ship his hogs to us; but when they request us to come out sometimes it is to pass judgment on their stuff and get our advice on it. As to how we select a territory into which we will go on these soliciting trips; the shipper might come in and say that there are quite a few cattle in his immediate vicinity and it might be a good plan for us to go out, and we go out. We solicit cattle as well as hogs only in Montana. Otherwise I confine my soliciting to hogs. Sometimes it is pretty hard to go about soliciting livestock away from direct buying sources. We try to tell them the advantages of the Chicago market over the direct concentration points. That is all. You don't know which ones sell direct until you run into them. We do not make [fol. 1403] special trips out for that purpose; just when we are on the trips that is all. I do not keep informed each day as to what the packers pay for their hogs in the country. The only way I have of getting that information is when a shipper ships a load and tells me what he was bid in the country on them. I do not know the number of hogs the packers in Chicago buy direct each day.

Redirect examination:

I was last on a soliciting trip six months ago. I am going away tonight, to Montana. I am going to interview the ranchers. Am going to make my headquarters at Livingston, Montana, and work out from there. There is going to be a big movement from there in the next two weeks. I desire to go there to get as much of that business as possible. I expect to be gone two weeks, and maybe three. I

have had requests to come and see cattle in that country, and my first business will be to call on those shippers who have requested me to come to Montana; and I also expect to see others than those people in order to obtain their business as well.

Recross-examination:

I am going to solicit sheep and cattle. That is all that comes from there. I will see all of our previous customers and try to get all the new ones I can. I cannot say that most of my time will be spent in soliciting new customers. I don't know. I will see as many of the old ones as I can and as many of the new ones.

[fol. 1404] I have kept no account to determine what results I have obtained by way of drawing shipments to us which formerly went direct. We have gotten some of it, surely. I would not say how much though. I do not know how much business we have lost through direct buying. The business of our firm has decreased in the past five years, our hog business, some. I would say that the big end of the hogs went to direct buying, some of it might have come through other firms at the Chicago market, but the big end went to direct buying, I would say.

I stated that I felt that I am as efficient as I ever was, and I feel that way even though our receipts have fallen off. When you can control your business, I think a man is efficient. The only business that has gotten away from us is direct buying, I would say. I think the ability to control business determines our efficiency.

It is my opinion that we work harder to sell a given lot of livestock now, than we did five years ago. Five or six years ago a man would ship you a load of hogs and you could sell it mixed. You just had one sale. Now that one particular load of hogs, you have to cut up all the way from five to ten different lots. You get a truck load of hogs of ten or fifteen hogs and sometimes you have to make five or six lots out of them. It is no more difficult to establish prices on the Chicago market than it was then.

[fol. 1405] Redirect examination:

There has never been a time in my experience in the commission business that presented a greater problem or

constituted a greater hazard than the present moment. There has never been a time when it was as difficult to make a living in this business as at the present time.

Redirect examination:

Q. One other question, Mr. Gentleman, you understand that the Government is at the present moment considering the question of marketing hogs, corn hogs and do you understand in the connection that there is a proposal pending to the effect that the production in hogs will be reduced by the marketing of piggy sows?

A. I have read something about it.

Q. If that goes into effect, that would present a hazard by reason of the determination to reduce the volume of hogs marketed which would affect them very adversely?

A. Certainly.

Mr. Francis Melvin Hatch, a witness called by the Respondents, testified as follows:

Direct examination:

I live at the South Shore Country Club. I am in the livestock commission business. The name of our company is the Northwestern Live Stock Commission Company, organized under the laws of the State of Illinois. It has been in existence over forty years. I am one of the principal stockholders. The other stockholders are T. P. Ford, [fol. 1406] D. M. Woods, J. B. Hatch Jr. I sell all kinds of cattle. J. B. Hatch Jr. sells all kinds of cattle. Mr. Ford sells cattle and buys on orders. Mr. Woods sells hogs. Mr. Joseph Hanley was with us in 1932 but is not with us now. T. J. Connors was a bookkeeper. He left on the 15th of April, 1932. We employed some one to take his place. R. E. Johnson works in the hog department, yards hogs and sells hogs. Humbert yards cattle and hogs, yards everything. We employed him some time in the month of April last year. F. Fox worked for us last year for three months selling cattle. Ambrose O'Malley sells butcher stuff. He also sells with me now. He started in December of last year. A. P. Schmal works in the cattle department. He handles his own trade through us. Mr. Hanley received

a straight salary. Mr. Johnson receives a small salary plus commission. He works on a commission basis of fifty-fifty. Mr. Fox is on a salary and commissions. He gets fifty-fifty of commissions. And Mr. O'Malley the same; Mr. Schmall has been mostly on a straight fifty-fifty basis with no salary. At times he has had a small salary, but at the present time he is on fifty-fifty. I make our own arrangements from time to time with him. We try to make the owners' salaries according to our business. The salaries for 1932 were established at the first of the year. We made a change in them during 1932. I think that was in March, 1932. We have made reductions during 1933. [fol. 1407] There were some little advances, not much. Mr. Wood had an advance. That is all. Mr. Humbert had an advance. He started in as a young man, you know, a year ago last April. He has become sufficiently proficient to cause me to raise his salary.

The arrangements made by us with reference to paying for any soliciting done on business where these persons working on a commission make soliciting trips, we pay the expense according to the commission we get out of it, on a fifty-fifty basis commission. It is fifty-fifty expense, the same way, we each stand our proportion, according to the commission we get out of the gross. I have no idea what proportion of that sum was spent for making trips where requests were made to come to the country rather than for straight soliciting. We seldom get requests to come to the country to appraise cattle.

We had a $75 a month reduction in our office rent during the year of 1932 by giving up part of the space. We don't own any horses at the present time. We have to hire horses occasionally.

I practically do no soliciting myself personally. It is a rare case when I go into the country myself. I sell cattle regularly. And ride a horse while doing so.

[fol. 1408] I was injured in the cattle alley a week ago today. This is the first day I have been out. The horse I was riding was rather mean, got scared at some trucks that were going through the yards and he started to turn around and I started to get him around, I didn't want to give up to him, and I didn't feel that he was going over, but he finally went over. He fell partially on my left side. I have been hurt before at different times. About three

years ago, I had a steer, I was sorting cattle, and a person called me, and they were wild western cattle, and he called my attention and the cattle kept coming on and I didn't know they were coming on and he jumped over me and he cut my head open and knocked me down and when I came to, I was in the Washington Park Hospital. That is a hazard that is apt to happen at any time.

I had another one in Sioux City, Iowa. I was sorting some western cattle, and they were wild, and I didn't know it, and the boys had been trying to sort them on foot, and they got them irritated, and I went into the alley, a little pen about twenty feet square, and I noticed that one of these animals was very mad and I wheeled my horse and tried to get out, and he caught the horse between his hind legs, gored him, and killed the horse, but I was so close to the fence that I could jump over. I jumped on the other side of the fence. We had a good many of these hazards in our business. We do not carry any accident insurance [fol. 1409] and charge it to the natural expenses of the business. I know that the rate is higher in the case of salesmen than in the case of other callings. It is considered a greater hazard, and it seems to be getting more so every year.

We clear Compton, St. John and Dunbar Company. The others are individuals. That is the only firm we really clear. We have suffered losses in the business due to the defalcation on the part of employees. We discovered that April 15th, 1932. The bookkeeper had been taking money out of the cash drawer. It ran into a considerable sum. He was not bonded. The amount of the loss was set up on the books last year. Perhaps just what he took last year maybe was set up; he was taking it over a period of about four years, and I am not sure how they handled that, but they knew what he took, we knew what he took in 1932.

All of our salesmen work together, the yardmen bring them from the chutes and put them in the alley. Usually the steer man and the butcher man sort them if they are mixed cattle. T. P. Ford, J. B. Hatch and I sell steers. Mr. Ambrose sells butcher cattle and bulls and calves. The steer men work on them together. When we sort a mixed drove of cattle, the butcher stuff goes to the butcher alley and the steers are sent to the steer alley.

[fol. 1410] We have done a good deal of loaning money to shippers and feeders during the last twenty years. I take care of that for the company. We rediscount most of that paper. The bank charges 6 per cent and it depends on the locality at which we take the paper; in Illinois from 6 to 7 per cent; Dakota and Iowa 7 to 8 per cent; and Nebraska uaually 8 per cent. The expenses of handling the loan is as much as the difference in the rate at which we take the paper and what we sell it at. There is no profit, from the standpoint of loaning money alone in those transactions. We have suffered losses. They have been quite heavy in South Dakota since the drought that we have had up there in the last four or five years. We have charged most of them off.

I believe the loaning of money to patrons when that money is used in feeding, developing livestock for market, that that is properly a part of the livestock commission business and should be so regarded. We make those loans in order to get the business to sell on commission. It is not possible for most of these shippers to get loans for that amount of money. We were financing or assisting in financing the people that we thought were responsible who would ultimately ship livestock to the Chicago market and to us. I think the loaning of money on this business is profit-[fol. 1411] able from the standpoint of commission men. I think that is true over a period of years. We do not get it from the rate of interest but from the commission business.

If a person has a lot of money of their own, he can make some very good loans in the livestock business, get good rates. In that way, you can use your own money to good advantage and, at the same time, originate business for your company. It is necessary however to exercise great care in the loaning of money in the livestock business; and we are especially fitted for it through the long years of experience we have had with the various people feeding and raising livestock, we know their ability in that respect. The reason we lost money in 1932 was account of the defalcation of Mr. Connors. Business was not very good with us otherwise. South Dakota at that time, which is a very strong territory with the Northwestern Commission Company had practically no business. That is one of the conditions that is apt to confront a commission firm at any time. I attribute the loss of that business to the drought that

existed in the territory from which we received a large part of our business in Dakota and also Nebraska. The situation in that territory this year is that there has been practically no business from Nebraska this year. South Dakota has had a better business than last year as they raised more grain in 1932 than they did in 1931. The next year [fol. 1412] we will get practically no business from Dakota as they are raising nothing up there in the way of grain. The drought took the small grain early. Then they got rains for the corn at the proper time, but the grasshoppers have taken the corn.

I think that a rate should provide a commission firm with a sufficient profit to be able to withstand the losses that would result from a condition that I have described. The commission rates now being charged are not ample for that purpose. The number of sales that are necessary to be made to dispose of livestock and the number of drafts necessary have been increasing very much, have for the last twenty years. It has been increasing very much the last ten years. Shipments are getting lighter all the time, a farmer would not have enough stuff to make a load, 15 or 20 farmers would go in together and ship a load, naturally you would have many more sales under those conditions. We try to get all classes of business, carload or truck. We don't specialize in anything. We work on all kinds of livestock when we solicit. The hog business has decreased from 1931 to 1932 on account of direct buying. I think that the main portion went to concentration points; some have been consigned to other commission firms at Chicago. Mixed cars usually have to be graded more than straight cars. I have sold cattle for twenty-nine years.

[fol. 1413] Q. Based upon that experience, do you believe that a carload basis is a proper basis for the determination of the amount of work necessary in the sale of cattle, or do you believe that the number of drafts as shown on these sheets before you represent more accurately the units of work necessary to dispose of the live stock which you receive on commission?

A. Read that question.

(Whereupon that question was read.)

Q. Do you understand the question?

A. Yes, but I don't know really how to answer it.

Q. Well, do you find that livestock varies as to the number of drafts and the number of sales necessary to dispose of a carload?

A. Very much so, yes sir.

Q. You have cases where you will have to sell each animal separately in a load?

A. Yes, sir.

Q. You have cases where you have 23 or four head to the draft?

A. Yes, sir.

Q. And you have some cases where you sell a carload straight?

A. Yes, sir.

Q. In one draft. Now, as there is a wide variation in the number of sales which it is necessary to make, is it possible to determine the number of sales until you see the cattle and have them on the market and are actually selling them?

A. No, sir.

Q. The work papers reflect the number of drafts into which the business had to be broken. An example of it is before you——

A. Yes.

Q. —indicating the drafts into which you had to break the animals to sell them. Now, what I want to know is, is it a proper basis to assume that a carload of livestock repre- [fol. 1414] sents a proper unit of work or is a better basis the number of drafts representing the number of sales?

A. I think it is a better basis to gauge our prices on the number of sales in a car.

Q. Well, now, as to the amount of work necessary, is it a better basis for judging that?

A. It takes very much more work on a mixed load than it does on a straight load.

Q. Well, is there anything accurate about the sales effort necessary to sell a carload as a carload?

A. Anything what?

Q. Is it an accurate basis to take a carload of cattle and to consider the work done in connection with it on a carload basis?

A. No, sir.

Q. What is the proper basis for the consideration of that question in your judgment?

A. As I said before I think it should be judged on the number of sales that we have to make in the load.

I employ the help. I decide what we will pay them. I decide on the amount of time that he should go to the country to solicit business. I make the decisions with reference to financing otherwise. I have been trying to hold down the money spent for solicitation as much as possible during the last two years.

We have had to hold down all expenses, as you can see, from examination of the blue audit, by our salaries, and we have tried to keep other expenses in line; for the amount [fol. 1415] of business we are receiving we could not afford to take a chance to go out and spend a lot of money, it being hard to get the business especially on account of direct buying. That applies more to hogs than to cattle, but they are buying a good many cattle direct as well.

Our total expenses as shown on the blue audit for 1932 was $30,005.56, and our total expenses for the year 1931 was $46,000, so that we have reduced our expenses $16,000. That is part of the responsibility of the management. We got our expenses down about as low as we could get them in 1932. There has been practically no change since that time, I believe. We are making a little money, but not much. We have not reduced salaries in 1933.

Cross-examination:

We reduced our expenses $16,000 in salaries and other expenses. Soliciting and advertising was reduced.

I own about 90 per cent of the stock; the remaining stockholders are all relatives. J. B. Hatch, Jr. is a nephew. He owns 40 shares, and there are 500 shares outstanding. D. M. Woods owns 10 shares; T. P. Ford owns ten shares.

[fol. 1416] The defalcation of the bookkeeper extended over a period of about four years. We have had an auditor to check our books every year; and checked three times in the last year and half the bookkeeper was there. The auditor did not really discover the shortage. But at his suggestion we checked into the freight account and found the bookkeeper taking $100 at a time. We had no bond on the bookkeeper but the treasurer was bonded, and he was supposed to watch things. The treasurer signed all the

checks, with the exception of those that I signed. I never tried to get a bond on the bookkeeper. When he first came there he handled no cash at all, but, of course, later on we got to letting him use the cash there and let him give out money to the shippers and it led up to that. We carried our own insurance on him over a period of years but I have not found that it was to our financial advantage.

I was brought up in South Dakota from the time I was fourteen years of age. I handled western cattle for years. I met with accidents on the range, but they were altogether different.

I answered on direct examination that I thought the draft showed more accurately the amount of work done than the carlot when it came to fixing rates. It is now based somewhat on drafts. We get more of a rate when there are more drafts. It would be pretty hard for me to [fol. 1417] figure what commission rates in my opinion, would be necessary in order to insure us against loss caused by drought. I have said that I thought the rate should be higher, so that it would in a sense insure us against such losses. Off hand I cannot figure such a rate and could not tell you what the rate should be. It is my thought that with an increased rate it would practically insure us a continuation of our business and insure us a livelihood in the commission business.

R. H. Greene, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 9851 South Winchester Avenue. I am head cattle salesman for Rice Brothers.

When I was eight years old, I was on a farm in Rice County, Kansas and we fed a good many cattle and milked some cows. I was there four and a half years and went east to college and came back to Fort Dodge, Iowa, where we had moved, where we fed a good many cattle and milked a good many cows, in fact, supplied the town of Fort Dodge with most of the milk and carried on general farming operations there, my older brother being the head of the operations, but I spent a good deal of the time on the farm while I was teaching in the high school there. I then came to

Chicago and for about ten years bought cattle for Swift and Company and for the last twenty-five years have been em-
[fol. 1418] ployed in Rice Brothers in charge of the cattle selling.

We have a man who sells bulls and calves. Another man sells the cows; another man sells the yearlings and Mr. Rice sells the stockers and feeders and I sell the fat cattle, with the general supervision of the entire operations. I sell the fat steers myself. Rice Brothers handle all kinds of cattle. Our receipts come from Texas, Oklahoma, Kansas, Nebraska, the Dakotas, Montana, Wisconsin, Iowa, Missouri, Illinois, Indiana, Ohio, Michigan and Montana with a few Colorados and Wyomings. The receipts that come from these various states show a very great diversity in quality and grade and class; a very common quality to the very best. Today it requires cattle to be graded very carefully in order to get the maximum amount in their disposal. There is nothing that is more important on this market than the careful sorting and grading of cattle. There is a great difference in the amount of gross money to the customer to be obtained by careful grading. I am confident the amount of sorting done today has multiplied twice and I think three times, more than several years ago.

When I came to the yards, a drove of cattle would come in and they would sell them all together, cows and heifers and bulls would frequently all be sold together. In the afternoon, the buyer would go out and sort them or in some packing houses they would be graded and sorted at the
[fol. 1419] packing houses. Today they have individual buyers for each class of stock and we have so many order buyers here that you can select from your cattle certain cattle that will suit certain men and you get an increased price through having something that will just suit the buyer. After all, cattle are sold for what they look to be worth to the man who purchases them, and it is the intent of the person sorting them to make them look as attractive as possible to the purchaser. You put a diamond on a piece of black cloth to make it more brilliant and on a piece of what paper to show its color, and similarly we try to make these cattle more attractive in bunching them together in a tight pen if they show a little grossness in the belly, we cover that up, if possible, or, if they will stand careful examination, we do not mind them being loose in

the pen. The only object we have in view at any time is to increase the net returns to the shippers of the livestock.

The number of hogs for sale on this market is perhaps 40 per cent less and the decrease in receipts not over the last year but over a period of years is 10 to 15 per cent less.

Many of these cattle are coming in trucks. It requires much more yarding expenses, more pen room to handle them, and it is more difficult to sell a few cattle than a load of cattle and inasmuch as they can send a few at a time they are not careful about grading and they will send all sizes and kinds in that same consignment. When we have [fol. 1420] a consignment of cattle belonging to three or four owners, and each owner has three, four or five grades or classes; we take off each owners cattle separately and, if we are short of pen room, we either chalk mark them carefully or I get a very clear conception of just who owns which and sell them that way. Might I add there that the packers are very diffident about buying so-called odd cattle. They say that they are mixed in there and complain about wanting to buy these odd cattle. We have more odd cattle to sell now than we had a few years ago; many more.

We receive some business from the extreme Southwest. Oklahoma and Kansas. They come from both large and small operators. We have among our customers some of the large operators of Kansas and Oklahoma.

They frequently ask us to visit their feedlots, but I try to be here the first four days of the week at all times, and can spend Friday, Saturday and Sunday in that territory and either drive home or take the train. I think I acquiese in requests to see those strings of cattle in Kansas and Oklahoma five per cent of the time. If I were in consultation with an owner that had a train load of cattle; if they were of several kinds and I thought the market favorable, conditions favorable, I would advise him to ship the entire [fol. 1421] consignment for one market, but if they were all one kind I think five to ten loads depending upon the demand would be wise.

We first take off the females and the calves and the bulls when handling cooperative shipments. Then we yard them according to the marks or descriptions as given us in the advice accompanying the shipment, and sell and weigh those separately except in the case of calves, when the manager asks us to weigh them in bulk, as of course, there is a dis-

advantage in breaking the scales, it takes ten pounds to break the scales.

In the handling of a load of cooperative cattle, it sometimes occurs that the entire sales force of Rice Brothers is in working on some portion of that consignment. They would be calves and bulls and cows and heifers and stockers and the fleshy cattle. And the entire sales force would have a greater or less duty to perform in the sale of that consignment.

We were the originators of the system which is universally used through the yards. In fact, I, myself, organized the first cooperative society that was organized in Illinois, I believe, at Rockford, with Mr. Cleveland as manager. The tickets, after the sale, of which I have spoken, would be brought to the office and with the marks on the ticket, then the name of the owner is inserted, with the weight and the [fol. 1422] price and the gross and the marks of the several owners in this consignment. That I shall refer to as the master sheet. Then, on each of these sales, a small account of sale is rendered for each owner which accompanies the master sheet. In some cases, the entire proceeds are sent to the manager. In some, it is requested that a check be sent to each owner and should be remitted in currency or some other method. That master sheet is then totaled and any home expenses which are directed are deducted and the yardage and the feed deducted, and, of course, the commission and the total of the master sheet then must balance with the total of the small account sales sheets.

One buyer formerly bought many different kinds of cattle. Today the packers have adopted a scheme of certain buyers buying the house cattle, others the yearlings, still others the heifers, and another the cows, another the bulls and another man the calves. So that it requires so much more time for a salesman to get all these different buyers to carry on these different operations.

Each bunch of cattle in Swift and Company's office is killed separately. The percentage of beef, the hide and the tallow is figured and the so-called dressed cost, but that does not tell all the story, because the grade of the beef [fol. 1423] which they produce is taken into account and while that dead cost might show one drove of cattle to be cheaper than another, when the beef was sold a better quality of beef might have been produced by the lower cost

animals. A bunch of cattle at the present time, costing six cents a pound, which dressed 60, for the sake of argument, say that cost ten cents dressed, and another bunch of cattle that cost six and one-half cents alive might dress 64 and would cost approximately $10.20 dressed but they might be worth $1.00 a hundred more in the beef, so to the skill of that buyer in selecting the high dressing cattle as well as high selling cattle is the credit due.

Of course the buyers attempt to buy them as low as they think they can; that certainly builds up a considerable sales resistance on the part of the salesmen by the buyers. The buyers proceed now much more cautiously in making their examination and their bids on various lots of cattle than formerly. And as for the salesmen, it takes confidence in your own ability, knowledge of the goods which you are selling, a careful analysis of the attitude of the buyer, and much skill in reading human nature and still more skill in so handling that buyer that he may be willing to part with what he has in exchange for what you have.

[fol. 1424] As to whether that means an additional cost to the firm of Rice Brothers to meet that class of operations, it is difficult for me to answer it. The packers employing the most skillful buyers that money will buy makes it necessary for a commission man who wants to keep his service at a peak of efficiency to employ the very best talent obtainable himself, to cope with that situation.

The buyer would naturally take advantage of any lack of knowledge that that salesman might have and any lack of skill that he might possess in disposing of these shipments.

Five cents a hundred is approximately $12.00 a car, and there is more than that much difference between mediocre and first class salesmanship.

About one half of my time is taken up in business getting activities for Rice Brothers. The methods used are personal correspondence, in calling upon people in the country, and bringing in the influence of my customers to bear upon prospective customers. I feel it necessary for Rice Brothers to keep in constant contact with our customers because the customer feels that way. They expect and demand it.

In order to say as to my hardest competitor in getting new business, I would have to classify that by different territories. In the west the direct buying of cattle for the [fol. 1425] coast and Fort Worth at the present time; in

A. Well, the idea is that they are over there to make money if they can.

[fol. 1453] Q. Now, did you give considerable weight to the amount of profit that a firm made?

A. No, I don't know anything about the profits.

Q. Now, you have also told us that you considered the years that a man had spent in the livestock industry.

A. Naturally.

Q. If a man had spent fifty years in the industry and another man had spent but 20 years, what would be the difference in their salaries, assuming all other conditions to be equal?

A. They could not be equal.

Q. Beg pardon?

A. There is no such thing as being equal.

Q. Well, I have asked you to assume that all other conditions are equal in your mind, that you and your committee have reached an agreement without considering the time spent in the business and agree at the salary for each man and agree the salary should be the same, but then you learned that one man had spent 50 years in the business and the other but twenty. To what extent would that influence it?

A. It would not be at all, one man had twenty years any more than the man had fifty.

Q. So then, the amount of time that a man spends in his business is not material, in your judgment?

A. Not material, no.

I am acquainted with Mr. Kuenster. He does his business through another commission firm, another outfit, not a commission firm, but a firm that furnishes money. At [fol. 1454] the present time his operations are cleared by another firm. I do not know how long I have known him; eight or ten years; I have known him for quite a while. His salary must have been appraised if it is in there. The fact that Mr. Kuenster's business is now cleared instead of being operated in full under its own name would not influence me in any way at all because he is not doing this through any fault of his own. He had plenty of money in his business but the bank failing kind of tied him up. So that the mere fact that there was no moral opprobrium involved meant nothing in our calculations.

Q. We have before us in the blue audits for the firm a showing of two members who perform all the operat-ons of the firm. That is, they do the management.

A. What firm, Kuenster?

A. No, another firm. They manage the affairs of the business, they do the actual yarding, the actual selling and the actual bookkeeping. Now what influence, in your mind, would those factors have in trying to arrive at a fair value of these men's services?

A. Well, I would have to know who I was valuing and know all about it, who they are and know more about it then than I know now.

We appraised Walter Brothers as a very small business. We just appraised it at a minimum appraisal. We took into consideration the small amount of business done, that [fol. 1455] is all we could take into consideration, that is all we practically did for a small deal of that sort. The fact that they did all the work would not make any difference. The fact that we appraised their salaries at less than various yardmen receive in the yards; I don't know anything about the yardmen. Everything would be taken into consideration, the value of the shipper, they had so few shippers that it was pretty hard to put any value on them. We appraised the salary of other owners, a large number of them. I took into consideration the value of a man to the firm he is with, and only to the firm. It is all right for Walter Brothers to figure what they are worth to their shippers. I would not enter into that at all.

I don't know whether we appraised men at more than they were actually earning. We did not know what his salary or drawing account was at any time. The net results were considered which means the profit in a way. We did not have profits of the firms before us. Neither the net nor the gross profit.

I know Mr. Acker. I could not tell you how many years, quite a number. I am acquainted with Mr. Conover. I [fol. 1456] would say they have been in the stockyards 25 or 30 years. I do not have the exact figures in mind at the present time. Based upon the length of service only, the difference there would be in either percentage or dollars in the salary of those two men would be the difference in their business and the way it is handled. I mean the result

of the business where a man handling several thousand carloads, and another man handling a few hundred.

Q. And if the business of one had been consistently diminishing or decreasing over a period of three, or four or five years, and the business of another had remained constant, what difference would there be in the salaries of the owners in that case?

A. I don't think there would be any. If the man was worth the money, he might not be getting it, but he might be worth it, if he is unfortunate enough to have things sliding on him.

I don't place Mr. John A. Waters at the present. I am acquainted with C. F. Freeman. I think I am acquainted with George F. Hogan; I know C. L. Burnett.

We fixed a minimum salary to Walter Brothers because of the small amount of business. Our committee did not agree upon what we would call a minimum salary. I don't know if the term was used. We did not have any minimum [fol. 1457] salary in mind. We did not agree upon a maximum salary. If I thought they were worth 50 thousand dollars, I would say so.

Q. You would put that down, then, if you were aware of the fact that a business was being conducted at a loss, would that, in your judgment have any effect upon the value which you would accredit to the particular owner?

A. Well, it depends on whether the men might be worth 15 thousand dollars or 20 thousand dollars as a salesman for any firm in the yards, but he might not be successful himself. That could be very easily.

Q. Do you have in mind any salesman on the yards or any man on the yards, who, acting as a salesman, only, would be worth 20 thousand dollars?

A. I don't consider it that way. I took into consideration other elements in fixing those amounts.

Q. And you have told us all of the elements that you did consider?

A. It is pretty hard to tell you. Every man over there is different. One man is good one way and another man is good another way, and one man makes his money one way and another makes it another way.

Q. And by that did you mean that in practically every case you really appraised the man himself?

A. That is really what we tried to do.

Q. In what light would you consider a man who testifies that practically all of his time is spent in selling, but that he is consulted with reference to managerial matters?

A. Is he one of the partners?

[fol. 1458] Q. One of the partners.

A. I don't care what he does so long as he is a partner in the business.

Q. Now, if it be true that the 1932 appraisal and the 1931 appraisal are practically in accord, that there are minor differences, would you say, then, that you had considered the present industrial depression with the resultant decreases in earning capacity, or in your opinion should it be considered?

A. No, I don't presume that the idea that a man was dropped off for the time be[illegible]ring the depression would materially affect what he is worth.

Mr. Miles (continuing): Mr. Ryther, if one firm had a large volume of business and was doing business at a loss, and another firm had a small volume of business and doing business at a profit, to which owner would you assign the higher amount of salary?

A. Well, if I understand what this man would be worth if he had to draw a salary, as I say, as I told you a short time ago, there might be a man over there with a business losing money but personally he could go right out and earn a big salary if he wanted to go with somebody else.

Q. What proof would you have in your mind that he could earn a large salary outside?

A. Well, possibly I might have heard that he had been offered it, or something like that.

Q. And you would accept that as sufficient to write up his salary?

A. If I knew it was so.

Q. And if you did not know it was so, you would give no weight to it?

A. No.

[fol. 1459] Q. Now, there is one firm, the Sarsfield Commission Company, the record shows that with two of those men you increased the salary to a considerable extent and the third man was increased very little. Can you tell us

from this Exhibit No. 11, why you took the action that you did take?

A. I cannot remember now.

Q. And there is nothing in this record, Exhibit 11, that would show you the basis for that action?

A. No.

Q. As a banker, would you retain a man in your employ who was not earning the salary that he was drawing?

A. It has been done a great many times.

Q. On what basis?

A. On the number of years he has served faithfully and one thing and another.

Q. Sort of a pension?

A. Well, you could call it that, as long as he was held there on a salary.

Q. The record shows that in one case, the name is Mr. Moberly, the figure that he was earning, that your appraisal increased the amount by $488?

A. $488?

Q. Yes, sir, do you know the basis upon which that was done?

A. I don't remember.

I am acquainted with N. F. Nalley, with J. F. Nash, with Mr. Pritchard; I am acquainted with both W. P. and J. B. Roach.

[fol. 1460] Q. The record shows that in those cases that I have just read to you your appraisal committee figured the worth of their services at an increase sometimes of $3000 per year and sometimes as low as $1700 a year increase. The record shows further that if they were to draw the amount of salary which you have assigned to them as being their value, they would be doing business at a loss?

A. Yes.

Q. Now, with that situation in mind,——

A. Well, Mr. Roach, before he went in business for himself, was drawing a good deal larger salary than we allowed him.

Q. At what?

A. Salesman over there for another firm. We figured in what the man would be worth if he went out and got a job, I suppose, something like that.

Q. Where did you obtain the information that before he went in for himself he was earning more money?

A. Well, like you get any information. He was with the Iowa Live Stock Commission Company, and I don't know what he drew, but I know he was drawing a pretty good salary.

Q. Now, in these cases, to repeat the question, if they drew the amount that your committee has allowed, the firm would be doing business at a loss, but you did not consider that fact, the fact that the firm would be doing business at a loss in fixing these salaries.

A. Either one of them could go out and get the salary we have given them.

[fol. 1461] Q. What proof do you have, or what is the basis for your belief that they can do that, go out and get the salary you have allowed?

A. I know their ability, both of them.

Q. Do you know whether they have been made any offer?

A. I don't know that, no.

Q. Have you ever seen the record of any company showing that they actually had been paid an amount equal to your appraisal salary?

A. Well, I could not swear to it, because I have not seen the books.

Q. Now sir, would you take, please, the firm that I will now hand you, read the information which you had available or which is shown on this record, and then tell me just how you arirved at this man's salary, the mental process?

A. This Roach?

Q. No, this is another case now.

A. Who is it?

Q. George A. Benton.

—. ——.

Q. I would like to know just what your approach was to that firm?

A. More than anything else, on the volume of business he was doing.

Q. On the volume of business that he was doing, is that correct?

A. Yes.

[fol. 1462] Q. Are you familiar with the rates and charges of commission men at the Chicago stockyards?

A. I could not tell you without taking one of their circulars and reading it off. I don't know it, they are all alike.

Q. Now, let us assume this, that if the owner of the firm were to draw the same amount of salary which your committee has allowed him, and if in order to get that salary it would require an increase in rates by 20 per cent or 100 per cent, would you still believe that your committee was correct in fixing the salary which you have fixed?

A. Yes, as I tell you, I fix it at what I think the man is worth.

Q. And the way you determine what he is worth——

A. If he does not get it, it is his fault.

Q. —is by what he can earn?

A. Yes.

Q. Would you explain for us, please, just why the volume of business is material in arriving at your salary schedule?

A. An idea of about what he is doing, that is all.

Q. Even though he may be doing that business at a loss, that is just his hard luck?

A. That might possibly be.

As to what volume of business a company would handle in order for us to arrive at a minimum salary, I don't know what the minimum would be. This man may have some other means of livelihood right here in the yards, get a [fol. 1463] salary somewhere else, for all we know, selling goods for some other firm besides his own. Assuming that he is handling only livestock consigned to him, to his firm, what is the minimum volume that would determine what we should fix a minimum salary; it would be no receipts at all, I guess. If a man received one carload of business. he would not be in business. He would not be a commission man. If he received 37 carloads a year, all those fellows that you are talking about are men who in a great many cases are drawing a salary for working for some other firm and have their trade on the side. That happens a great many times, that is taken into consideration in fixing these salaries. If an owner of a firm were getting 37 carloads a year, that would not enter into my figures at all; I would figure what that man was worth if he wanted to go to work for a salary in that particular case. If one firm received one-third of the total volume of receipts on

these yards, the salary that we would then figure should be allowed to that firm would altogether be owing to circumstances. Circumstances whatever they were. Nothing of that sort ever came up. We would not necessarily de- [fol. 1464] termine their worth according to the volume of business. Other factors would be a man's ability to hire and handle men to take that amount of business and make some money with it. But if he could merely hire the men but fail to make money, he would not have the reputation then if he is not able to hire men to handle his business to make some money, then he is not as good a man as one who can do it.

We would still figure he was worth something along that same line, which would be the results. And if the results showed a deficiency, we would still feel he was worth something possibly if he was a good salesman; that would be because we believe he could go out and get some kind of a salary.

In our bank I do not hire the employees. I am not responsible by conference with other officers of that bank for what salaries shall be paid. My opinion that it is worth to sell a carload of cattle, whatever commission they can get out of it, and if the commissions were reduced, it would be only that reduced commission it would be worth. In some instances I would consider what a man could get [fol. 1465] from another firm, and if this man controlled a certain amount of business when he was employed as a salesman by another firm, that would not enter into our calculation or consideration as to what he is worth, or what salary he should pay. He might control some trade where he is working at present, and, when he left, he might not take any with him at all.

Mr. Dee Roy Kendall, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago, and am the cashier of the Livestock National Bank. I have been connected with a banking institution at the Stockyards, since January 1, 1896. During that period of time I have become more or less well ac-

quainted with a great many of the proprietors or the persons engaged in the livestock commission business at the Union Stock Yards, Chicago. I was selected as a member of the committee to appraise the salaries of proprietors who are engaged in this business during the year 1932.

I heard the testimony of Mr. Ryther, and I concur substantially in the statements made in direct and cross-examinations by Mr. Ryther to the questions that were propounded.

[fol. 1466] Cross-examination:

I know of no exceptions where I do not concur with the testimony of Mr. Ryther.

Mr. Charles Kelly, a witness called by the Respondents, testified as follows:

I live in Chicago. I am not engaged in the livestock business here at the stockyards. I was for a large number of years, engaged in the livestock commission business as a proprietor at Chicago and at other points. During that period of time I had occasion to employ a large number of persons in the livestock commission business. The period of time as proprietor extended from 1885 to 1922.

I was selected as a member of a committee of which Mr. Ryther was chairman, and who has just testified for the purpose of arriving at the reasonable salaries of proprietors engaged in business in the Union Stock Yards during 1932. And I acted in that capacity. I heard Mr. Ryther testify. I could hear only part of it. I heard him testify with reference to the methods employed in arriving at the conclusions reached by the committee, and the length of time that was devoted to the work. Generally speaking, I concur substantially in all of the statements made by Mr. Ryther in response to questions propounded to him on direct examination as well as those questions propounded by [fol. 1467] Mr. Miles for the Government.

Cross-examination:

As to what respect if any I do not concur with Mr. Ryther's testimony; in putting my own testimony in there, in grading these rates, I went largely by the men that I

knew over there covering a good many years while I was in business. We discussed it backwards and forwards many hours. Now, there were five of us, now, practically, over there, but here would be one man that I would not know so well, and they would know extra well, and another man that I would know extra well and they would not know so well, and we would each of us give the other one the benefit of what he knew and figured it out.

Q. Do you have anything in mind that you would wish to change in Mr. Ryther's testimony, either direct or cross examination except as you have already testified?

A. I think you should bring out there more clearly the value of the men there who don't make as much money as they were allowed in salary, that should come out more clearly and if you will allow me to illustrate this in my stockyard way.

Q. Will you do that?

A. A number of years ago, I took over a firm at Kansas City. At least, I hired the two members. There was no [fol. 1468] firm to take over, Carnes, Ratliff and Company. There were two members of the firm and I won't be positive about the year, but about 1918 or 1919 they had somewhere between $30,000 and $35,000 worth of business and they did it at a loss. I hired those two men, one at $4,000 and the other at $6,000 and I made a profit out of them. That is, on the management; the men had ability and could do the business but they needed the man to manage it.

Q. Is there any other suggestion that you wish to offer?

A. There was one question you asked Mr. Ryther there that here was a man, one was devoting ten per cent selling and ninety per cent in management.

Q. Correct.

A. And the other one, reversing it, 90 and 10.

Q. Yes, sir.

A. And you wanted to know if you would make any difference in their salaries.

Q. Assuming that other things were equal?

A. Yes, sir.

Q. All right.

A. One man might be worth three times as much as the other. I will give you one illustration of that. My brother and I were in the commission business here in Chicago from 1885 to 1910, when he died, and he had two-thirds in-

terest in the business and I had one-third. I devoted all my time, practically all of my time, most of the time to selling and he did to the management. He had a two-third interest and I had a one-third and he was underpaid and I was overpaid, and I think I can prove so by fifty people over there at the stockyards.

Q. Just how would you determine the fact that he was underpaid and you were overpaid?

A. Well, from an ability standpoint.

[fol. 1469] Q. How would you determine that ability?

A. The ability to run the business, to manage it and handle 500 men and I could only handle a few in my department. A general can handle an army and a captain only handles his company.

Q. My thought, in propounding that question, was not so much to determine the man, but to determine whether there should be a difference between the manager's salary and the salesman's salary and I wanted to assume that everything was equal and the ability of the men were equal.

A. Well you cannot take any two managers there of the same ability. Now, there would be running some lines of business, you would have a manager that would go ahead and do it fairly well and some salesman in a department where they had a big volume of business in that department would be lots more valuable than that manager. On the other hand, it might be otherwise, the managers would be more valuable. You have to take individual cases. It is like a doctor. He cannot prescribe for all of us in this room if we should all get sick. He cannot give one prescription to fit all of us.

Q. In other words, doesn't it boil down to this, in your mind; it is the man, the person himself?

A. Personally, it is the person himself.

Mr. Harry McNair, a witness called by the Respondents testified as follows:

Direct examination:

I reside in Chicago and am engaged in the horse commission business, with headquarters at the Union Stock Yards, Chicago. I have been engaged in business at the Union

Stock Yards since 1893. During that period of time I have become acquainted with a number of the proprietors en-
[fol. 1470] gaged in the commission business at the Union Stock Yards. I was chosen as a member of the committee to appraise the salaries of owners of livestock commission businesses engaged in that business at the Union Stock Yards, Chicago, and I entered upon that duty, and participated in conference with and concurred in the conclusions reached by that committee. I heard this morning Mr. Ryther, the chairman testify; I heard Mr. Kendall as well as Mr. Charles Kelly. I heard the questions asked and the answers made. I concur substantially in the answers made by each of these gentlemen and the questions propounded on direct and cross examination. There is nothing that I would like to add to the testimony given by either or all of these gentlemen.

Cross-examination:

I am not a member of the Exchange. To my knowledge none of the members of this committee was a member of the Live Stock Exchange.

Respondent's Exhibit No. 11 being report of Appraisal Committee was received in evidence.

[fol. 1471] Earle D. Mudd, being duly sworn, testified as follows:

Direct examination:

From 1901 to 1907 I was in the service of various railroad companies as time keeper and accountant in the transportation department and as maintenance accountant and car distributor in the General Superintendent's office. From 1907 to 1911, I was employed by the Southern Pacific Railway Company as accountant and later as chief accountant progressively in charge of several branches of the accounting department. From 1912 to 1914 I was chief accountant to the comptroller and later auditor of disbursements of the Illinois Central Railroad Company in Chicago having an organization of between 200 and 300 accountants under my supervision. During 1915, 1916 and 1917 with the Inter-

state Commerce Commission, I was chief accountant in charge of the accounts of all telephone and telegraph companies relating to federal valuation for ratemaking purposes. From 1918 until 1926 I was the assistant comptroller, expense control manager and operating manager progressively of the National-Bellas-Hess Company, a mail order house ranking third in size. During 1927 and 1928 I was special accountant with Roberts-Pettigrew & Woods Corporation, public accountants in Chicago during which time I prepared a complete revision of the interstate commerce commission systems of accounts as used by all railways. During 1929 and '30 I represented McDonald Bros, Inc. industrial engineers of Boston. In 1931 I was again with Roberts, Pettigrew & Woods Corporation. At this time I was in charge of the accounting work for the respondents in the commission rate cases at Kansas City and St. Joseph, Missouri. From 1931 to date I have been engaged in the public practice of accounting with offices in Chicago. My work has included preparation of cost and other data for the St. Louis Live Stock Exchange and Chicago Live Stock Exchange in connection with their rate cases before the Department of Agriculture.

[fol. 1472] 1. General Explanation

(a) Exhibit No. 12 consists of a series of schedules Nos. 1 to 33, inclusive, which have been prepared by me as Consulting Accountant for the Chicago Live Stock Exchange, on behalf of its members, for the purpose of presenting to the Secretary of Agriculture in connection with his investigation of livestock commission rates charged at Union Stock Yards, Chicago, under Docket No. 402, evidence showing the character and volume of business handled by each of the respondent members of the Exchange, the costs which were incurred by them in the conduct of their business during the year 1932, the amount of commissions received by them for the sale of livestock during the same year, and the amount of profit or loss which resulted from their operations.

(b) Inasmuch as the accounting forces of the Secretary of Agriculture made a detailed audit of the books of accounts of each of the respondents for the entire year 1932

and analyzed the sales and purchase accounts for the same year, I did not duplicate their work but have used their audit reports and statistics (Government Exhibits Nos. 16, 49 and 50) as a basis for my own studies and exhibts, having taken exception to the Government figures whenever necessary to accord with my differing views, and having applied my own methods instead of those used by the Government in the distribution of salaries and expenses to the several species of livestock handled and as between the several "modes of arrival" or rate classifications thereunder.

2. Reconciliation of Government's Costs and Respondents' Costs

(a) The differences between the Government's aggregate costs for all Chicago Live Stock Exchange firms and the respondents' aggregate costs are, as follows:

Government's Costs (Gov. Exh. No. 49 page 51)	$2,759,073.08	
Interest on Capital (Gov. Exh. No. 49 page 96)	45,989.45	
Government's aggregate costs		$2,805,062.53
Owners' Salary Appraisal Adjustments	$353,608.00	
Administration Salaries not charged to branches	11,100.00	
Expenses of other branches not charged to Chicago	2,722.00	
Interest on capital requirements	11,109.55	
Total additions	378,539.55	
Less—Country selling & buying salaries	2,276.00	
Net additions to Government's costs		$376,263.55
Respondents' aggregate costs		$3,181,326.08

3. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Owners' Salary Appraisal Adjustments

(a) These adjustments were made necessary by reason of the fact that 56, or 29% of the 193 owners of respondents' firms did not carry themselves on their books of account at any salary whatever during the year 1932. In the other cases, the owners either carried themselves on their books at nominal salaries, or at salaries which they themselves had fixed. It was obvious that in order to arrive at complete and correct costs a reasonable allowance for the value of owners' services would have to be determined and included.

[fol. 1473] (b) However, the Government, in its attempt to rectify this situation assumed in those cases where the owners had not carried themselves on the books at any salary whatever, that it would be proper to allow as a substitute therefore whatever amounts of profits these owners had drawn during the year 1932. In those cases where owners carried themselves on the books at nominal salaries, or at salaries they themselves had fixed, the Government made no attempt to adjust these amounts to proper levels in the determination of costs.

(c) The respondents, realizing that these omissions would result in an improper and serious under-statement of their costs, arranged for the appointment of an Appraisal Committee to place a value upon the services of each owner. This committee consisted of five competent and disinterested men not engaged in the livestock commission business but who were acquainted with the commission firm owners and their business. As a further basis for their deliberations, the committee was furnished with the personal and business record of each of the owners, together with a record of the volume and value of business handled by their respective firms during the year 1932. At the bottom of this form provision was made for the committee to insert the value it placed upon each owner's services, and to sign. These records will be offered in evidence by another witness, but the results of this appraisal may be found on schedule No. 11.

(d) I had no part in the appraisal other than to supply the committee with the necessary records just mentioned, except that I instructed the committee not to give any weight whatever in its considerations to the owners' business getting ability or so-called following. On the other hand, it was pointed out that the volume of business actually handled by the owner's firm was an economic factor to be considered from the standpoint of operations and responsibility.

(e) Schedule No. 11, which lists the firms in alphabetical order, shows the name of each owner, the number of months he worked during the year 1932, the amount of profit or salary drawn during 1932, the appraised fair value of services he rendered during 1932, the gross difference between the appraisal and the amount of profit or salary actually drawn, the percent of time, if any, which he devoted to other commission firms or to the loan or other outside business, and the net difference between the appraisal and the amount of profit or salary actually drawn which amount was added to or deducted from the Government's figures in arriving at respondents' costs.

(f) A review of the results of this appraisal from an accounting standpoint, by which I mean its effect upon the costs, has satisfied me that the values placed upon owners' services, considered collectively, are fair and reasonable. When considered individually, I find a few cases where the volume of business handled by the firms was so small as to cause even an extremely low appraisal to result in an extremely high cost. However, the fact that these few cases involve but small volumes and amounts prevents them from having any noticeable effect upon the costs, particularly unit costs, of respondents' operations when considered collectively.

(g) In my studies I have tested the effect of these appraisals upon respondents' costs by grouping together the costs for those firms whose owners were given the same salary ratings by the Appraisal Committee and setting up their composite unit-costs opposite and respective salary levels, the highest salary being shown at the top and the lowest salary at the bottom. This was done separately for each of the three classes of owners according to the species

Iowa and Illinois, the solicitation by county agents for a particular firm. I find direct buying in the Iowa territory injurious to our business. I don't feel the effect of direct buying in Texas and Oklahoma, but other places I do. It has made it more difficult to get new business. The effect on the business of Rice Brothers if we got no new business would just fade away like a leaf in the fall.

I do not feel that Rice Brothers are making any material or excessive expenditures for the purpose of getting new business. In spite of all the effort we have been able to make the business has shown a decline. I feel that the service we are giving our customers today is better than the service we gave them five years ago. As to whether it costs Rice Brothers more to perform the service today than it did five years ago; the salaries have been lowered; from that point, no. But from the effort expended, yes.

There is a cattle market at Chicago for each grade and class.

Cross-examination:

I am the only fat steer salesman for our firm. I cannot tell exactly what proportion of the entire cattle receipts [fol. 1426] would consist of fat steers. I would approximate it would be forty per cent. And I sell those without assistance in the actual selling. I think it is more difficult to sell a straight carload of fat steers today than it was five years ago or ten years ago. The difference is the competition on the part of both buyer and seller to be sure that the buyer does not out-trade you and to be sure that your competitor does not outsell you. I hold over cattle whenever the owners request it; and I hold over, when in my judgment, we are not bid the value of the livestock. That will happen every day. I mean we constantly will have a load or two or five; I mean five animals, or ten or three or one, that we would hold over and we would hold them until I was convinced that there was no opportunity of getting more for them, that I have been mistaken in the market, or in my judgment of the value of the livestock.

I received straight carloads of steers this week; the greatest number that I received on any one day was on Monday and I think there were eighteen carloads. There were three men engaged in selling those eighteen cars. I personally sold ten carloads of the eighteen; sorting was

required on all but two cars. Two cars were sold as they [fol. 1427] were consigned. Of the sixteen cars that were left I could not tell you the greatest amount of sorting required, but more than twelve different lots, and the lowest amount required on any one of those cars was two.

I personally sold about ninety head arriving by truck on this Monday. On Monday of this week there were 19000 cattle on sale, the marked opened very slow, except on heifers and light yearlings. The heifers and light yearlings were slow to ten lower. They started bidding on the other cattle twenty-five to forty lower, but if a man had guts and determination he got his cattle sold ten to fifteen lower before the day was over. The ninety head of truck cattle were sold in approximately fifteen lots. I made my first sale at approximately 9:30 on Monday morning. I made my last sale on Monday at two minutes to three.

[fol. 1428] Mr. Lester Marion, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago and am a live stock hog salesman for the Bowles Live Stock Commission Company.

I am not reasonably busy in the handling of hogs now received by the Bowles Live Stock Commission Company. I attribute the falling off of the hog business of the Bowles Company in the last few years to direct buying. I would say that direct buying has reduced the volume of hogs coming to the Bowles Live Stock Commission Company, seventy-five per cent.

Cross-examination:

At the present time I am handling the hogs consigned to the Bowles Live Stock Commission Company and the situation in 1932 was the same as at present. I have the assistance of a yard man. I was given a reduction in salary in 1933. It was 25 per cent. I am hired on a salary plus commission. I get fifty per cent of the commission, on my own personal business. I have a following of my own that specify that they are mine. These hogs originate in various places. I obtain my following by going to the country and [fol. 1429] meeting these people.

The circumstances which I believe take fifteen times as long to sell a cooperative load now than it does a straight carload are, cooperative loads consists of a lot of different owners and these hogs have to be checked and prorated, each owner, hogs have to be identified and how to grade them. On cooperative shipments we do sell them according to grades and class, and then prorate the weights later.

To describe such a load there are times when we get a cooperative load of 35 or 40 owners in them, and we have to check each one of these marks, know what that hog is, those hogs might be sold together, but they have to be prorated and you have to check all those marks and know what they are.

The checking is done before the sale is made and the prorating is done after the sale is made, after the hogs are weighed. The prorating takes quite a while. It is usually done after I go to the office. It is possible that I might sell it as readily as I would a straight carload. It varies.

I would say that we have received a load of hogs containing as many as forty owners. I do not recall any specific shipment..

[fol. 1430] To show a pen of hogs to a buyer usually takes five to ten minutes. We sometimes have hogs of different owners arriving by truck in the same pen. We are not able always to show them all at one time; you have to sort those different grades; you cannot show all grades to one man. We sort them according to grade and then show each grade to a buyer.

I sold hogs before I came to Bowles for Rice Brothers, Frazier, and Dolan and Ludeman.

As to why I am working twice as hard now as I did three years ago; it has been a little bit longer than that; three years ago, you could take one buyer in the alley and sell them the whole alley, no sorting, no grading; and, today, you have to sort them up into anywhere from two to seven different grades and you have to get that many buyers. A lot of that change has come about in the past three years; it just started six years ago.

I said that Bowles' business has decreased about 75% over the previous years. That is just in hogs. I would say that the reduction has taken place in about eight years. I was not with that firm then. At that time Charles Goepher, Frank Conley and Lee Waffle were selling hogs for Bowles.

Frank Conley is with me now; Goepher is dead; and Mr. Waffle is out of the market. Each of these men control [fol. 1431] business. I think Goepher was with Bowles at the time he died; he took a vacation and then died.

The service now rendered by me is better than it has ever been before, because we put in longer hours, we have to watch our stuff more closely, a small amount of business that comes here has made competition so much keener. Everyone is fighting for everything they can get.

G. A. Benton, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 4611 Drexel Boulevard. Am in the live stock commission business. I am the owner of Benton and Company.

We sell everything in the way of live stock.

Until I was sixteen or seventeen years old I was on a farm, born and raised on a farm, and from that time on for twenty or twenty-five years, I was in the dairy end, I was with De Laval Cream Separator Company for twenty-two and one-half years, and then I went into the live-stock commission business with a Mr. Schroeder under the name of Schroeder, Benton and Company. That firm was in existence five years. It was dissolved by mutual consent of the partners.

[fol. 1432] Then I started handling my own business. My thought was to start a firm of my own, employ a sales force and carry along, but the volume had gotten down so low that I could not see my way clear and then there was the uncertainty before me of this direct buying which looked to me like the business was slowly dying, so in order to mark time I made a clearing arrangement with the Mullen Commission Company, and cleared my business through them, used their sales force for three years. At the present time I am carrying on on that plan, carrying on my business through Gillogly and Company. Gillogly and Company do all my sales work both in cattle and hogs and we do our own billing and advertising and letter writing, and I do my own soliciting, pay my own road expense.

Gillogly and Company look after collections and remittances for the livestock that I handle. I have full charge of the management of Benton and Company. It is a problem right now of getting new customers to take the place of those who are drifting away to other markets.

The methods I use and follow in getting new customers; I do considerable road work, I practically use up my entire sixty-three days a year because unfortunately my territory is my home territory where I was born and raised [fol. 1433] right along the Mississippi River and all of my home territory has been hit harder, I think, by direct buying than almost any other section, so I have had a hard fight to keep any of that business out there coming here from going to Savannah and Dubuque and Muscatine and Marquette, and all those river points, so my fight has been to hold the part of the trade I had and bui-d up new ones.

As to whether our firm is rendering a good service to our customers, from the fact that a great percentage of my customers repeat, it makes me think that we are giving service. They like it, at least, and come back for more.

I am not making any wasteful or extravagant expenditures for the purpose of building up my business.

Cross-examination:

I have never sold livestock here in the stock yards. I pay Gillogly and Company Thirty-five per cent.

On my soliciting trips, if I hear of a man that has got a bunch of stock, while I am in the territory, I go and look him up, but I generally try to keep in touch with my old [fol. 1434] customers and hold them if I can. I generally give them the preference. I naturally solicit producers and farmers who have been sending their live stock to other firms on the Chicago market.

Mr. Paul A. Filler, a witness called by the Respondents, testified as follows:

Direct examination:

I am vice-president and treasurer of Filler Wilson and McClelland. P. A. Filler is president of the corporation. Charles Filler is cattle salesman. Paul A. Filler, hog

salesman and general manager. Tom Hayes, yardman, P. W. Wilson, cattle salesman. Ralph Von Berner, yardman. Le Roy Young, office manager. Rita McInerney, stenographer. C. C. Wood, check-up service. Barney Hagney, yardman and scale man, and Anderson, yardman in the cattle alley.

Our employees were not reasonably busy in the conduct of business during the year 1932. The reason was we had less volume. There has been a considerable reduction in the volume of our business. We have made a corresponding reduction in expenses, but that has not helped. We have sustained a loss of capital. We have made salary reductions in the last year. We have curtailed general ex-
[fol. 1435] penses. We curtailed them very much so. I do not know of any way that we can make a further reduction in our expenses without impairing our service to our customers. I have been selling hogs since 1919, since I came home from the Service.

Cross-examination:

Corkery is employed on a commission basis. I keep thirty per cent. He sells principally his own trade. George Von Berner helps me sell hogs. He operates under his own firm name and we clear his business. We exchange work. We work on the same hogs. He receives some cattle business, very little. Our firm handles his cattle business also. The basis for compensation is the same. We get thirty per cent. He stands his own expense. We yard the hogs together and sell them together. Our office makes out his account sales. Mr. Von Berner has his expense of advertising, solicitation and stationery, stamps and what other expense there is other than office.

I sell the bulk of the hogs; he sells principally his own, but we work together.

My duties as manager of the firm are watching every detail. My brother has supervision over the cattle division. My work as manager is performed chiefly in the office. At times I make out bills, pro-rate, sign checks, make re-
[fol. 1436] mittances. Personally I assist in doing that at times, it depends upon the volume. My brother has authority to sign checks. My brother is on a regular salary. The two Fillers are hired on a straight salary. If we got more volume, we would have to work longer hours, which I would

be willing to do. It would require more help. In this business, there is never enough volume. We can always take care of the volume. We could not do it with our present force; we could adjust the force with increasing volume. I think we could handle more volume with our present force.

The way the conditions are now and the way the market is and how tough it is to get sold out, and we peddle our stuff all day long, we could not handle an awful lot more, but we could handle some, but if the market speeded up, we could handle a great deal more.

Speedy days on the market now are few and far between. We peddle and we peddle until we get blue in the face and then finally we give in. I endeavor to sell out each day.

I personally determine the amount which our firm will spend for advertising. We place no limitation on the amount we will spend for that purpose, but we are spending [fol. 1437] as little as we can to maintain our business. I would like to spend more. The amount we are spending is not adequate to maintain the business, but, under the set-up, it is kind of useless to go out and try to get business; because the directs and the part of the big packers in trying to divert livestock from the market. You can expend some for that purpose, but you cannot expend it like you used to.

Recross-examination:

A. T. A. Filler is my father. He was not selling cattle in 1932. He drew a salary from the firm. He controls business.

Willis H. Brott, a witness, called by the Respondents, testified as follows:

Direct examination:

I have quite a list of customers. If I received all the livestock they produced and handled, I would have enough business to retire on in about three years.

Cross-examination:

I did not mean to say that if all of my customers sent me all their busines we could handle it at the present time under our present set-up. You would have to have a set-up com-

[fol. 1488] mensurate with the amount of business you handle, which I would not know until we received the business.

We could handle more business with our present set-up if we could get it; I would imagine twenty percent more.

Mr. Montie Conklin, a witness called by the Respondents, testified as follows:

Direct examination:

I am one of the stockholders of Conklin Brothers Live Stock Commission Company, a corporation. I am a cattle salesman.

Cross-examination:

When I go out to solicit business from the farmers and appraise cattle; if I appraise the cattle I solicit the business. Sometimes other commission men have been there and looked over the same cattle and solicited the business. Notwithstanding that I would still request or ask that he ship to us. The other commission men probably have a chance to get him if he has not been a shipper of ours, but if he has been shipping to us for years, and I give him satisfaction, I go out and see his cattle and tell him what I think they will bring, and I am pretty near going to get them when they come. The fact that he has been shipping to us for years, [fol. 1439] and I have been out there would not deter other commission men from soliciting his trade.

I have been selling cattle about thirty years on the Chicago yards, at Sioux City and St. Paul before coming here. I came here about twenty-seven years ago. And I have been selling ever since.

I do not recall the greatest number of carloads or the greatest number of head of cattle that I personally sold in any one day; I could not do that without going over the books. I could not approximate it off-handed. Off-handed I could tell you Monday of this week about eighteen carloads. I did not sell them all. Some of it was butcher stuff. I think about sixty percent of them were steers and the butcher stuff was sold by Mr. Tormoehlen.

Cross-examination.

Conducted by Mr. O'Bryan:

Q. Mr. Daly, in answer to one of Mr. Miles' questions, I believe you stated that your cattle salesmen No. 4 and No. 6, were as efficient as any salesmen on the yards. Are you familiar with the cattle salesmen who are non-owners of all of the other commission firms on the yards?

A. How do you mean?

Q. Are you familiar with what they do or what they are paid?

A. I do not know what they are paid, no sir.

Q. Do you know what they do, do you know how many cattle they sell?

A. Some of them.

[fol. 1440] Q. Did you mean by your answer that if you paid one cattle salesman $3,600 a year and another $3,640 a year and some other firm pays the same kind of salesmen $8,800 a year and the next one $6,600 a year, that the Secretary should take from your answer and make a finding of fact that you have as efficient cattle salesmen as any on the yards, and that no commission firm should pay a cattle salesman more than $3,600 a year?

A. That depends. Some of these big firms have got fellows working for them, they are paying bigger salaries than I can pay, but they are men who probably cannot sell cattle as good as my men. Some of the firms paying the bigger salaries may be drawing enough trade to pay that salary. That has a lot to do with it. But men for men, I have had splits with all of them, and there has none ever beat me, so my men must be as efficient as anybody here.

Q. But you cannot compare their efficiency without having specific details as to the men on which you are making comparisons?

A. Well, you need not do that. The salary does not always make the man.

Q. That is very true. That is just the point.

A. Yes. I might hire you to sell cattle at $300 a month and somebody else hire you at $600, which would not make you any better.

Q. I would have to give you results?

A. It would be better for you.

Q. You would not keep either one of these cattle salesmen in your employ if you did not think the results warranted the money you paid them, would you?

A. If I did not think they were worth the money, no, sir.

[fol. 1441] Q. If they got results which, in your opinion, were greater than the money you paid them, and threatened to leave you, you might pay them more to keep them?

A. I might, I cannot say anything about it. I might get somebody I thought could fill the position just as good for that money.

Q. The point I am trying to bring out is that you are not trying to compare the efficiency of your two cattle salesmen with all of the cattle salesmen on the Chicago yards as to their ability, are you?

A. Well, I have got a right to an opinion.

Q. I know that you have a right to an opinion, but you must have some facts on which to base that opinion.

A. Well, the results of our sales on competing shipments is the best advertisement you can get.

Q. That may be very true, but isn't it a fact that there might be other cattle salesmen in the yards who day in and day out might get better results than even some of these cattle salesmen of yours?

A. They might be and they might not.

Q. So you don't know?

A. No, nobody knows.

Q. So that unless——

A. But when I say that mine are as efficient in my estimation as there are in the yards, I don't care whether someone else pays a bigger salary or not, that does not make the salesman.

[fol. 1442] Q. Do you mean by your answer that because you pay a man whom you consider as efficient as any on the yards only $3,600 that no one else in the yards should pay a cattle salesman more than $3,600?

A. I supervise all my cattle selling myself. There is not a steer goes out of the alley that I don't put an O.K. on. I am back of the market all the time.

Q. I am trying to get your answer clear, because as you gave it before, the Secretary might very well make a finding of fact in this case that: Mr. Conklin having testified that his cattle salesmen were as efficient as any on the yards, and Mr. Conklin only paying his cattle salesmen

$3,600 a year, no other cattle salesmen on the Chicago yard should get more than $3,600 a year. Did you mean that by your answer?

A. I meant that my men are as efficient in my estimation as any in the yards, and if he was not, I would get somebody who was.

Q. I am asking you if you meant what I said might be found from your answer by the Secretary?

A. As I said before, I don't know what the other fellows are paying, they may be paying $10,000.

Mr. John P. Bowles, a witness called by the Respondents, was recalled to the stand and testified as follows:

Cross-examination:

Indirectly I manage the Kansas City office, I am general manager; I have my man under me there, Thomas L. Bowles is the manager of that office, but I am the manager and go there.

[fol. 1443] That office requires some of my time and attention. The last year or so I haven't given it so much time; it don't need much; there is nothing to do, but I used to go down there monthly, sometimes oftener; sometimes I would skip a month.

The first day of February, I cut my salary; I cannot tell you how much, not a great deal, but some, and my son's salary and three of the bookkeepers, and then everybody dropped twenty five per cent, and the same thing was done in 1932.

I personally do not solicit so much now.

"I do not go to the country; I am invited and I go occasionally, yes, but I send my men usually. We have innumerable letters, inviting us and begging us to come out to see the cattle. I cannot always send them when they want them, but, if I do send one of the salesmen, if it is cattle, it will be a cattle man; if it is sheep, it will be a sheep man; if it is butcher stuff, it will be the butcher salesman; and, of course, they ask us often to come out and see these cattle, and there is not a load, or something like that, and, if we went, our expenses would be more than the commissions a

good deal, so we do try to catch up and make a circle around that neighborhood and get some more."

Those trips are not confined just to our customers, we will make new ones if we can; we are always leaning out for new trade, because they are dying out and quitting and everything else and we wouldn't have any business after a while, if we didn't. We would have to solicit the business of farmers and producers who ship to other commission [fol. 1444] firms on the Chicago market, because everybody ships to somebody; they take mine away from me and vice versa, that is, they get them, and, when they pay our commission, they do not owe us anything; they are free lances.

[fol. 1445] Mr. G. A. Ryther, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago. I am Vice-President of the Drovers National Bank. I have been in the banking business in [fol. 1446] the evirons of the Chicago Union Stock Yards since September 1888. During the time intervening between 1888 and the present time I have become acquainted with practically all of the proprietors of the livestock commission houses engaged in that business at the Union Stock Yards at Chicago.

I have come into personal contact with those persons. I was chosen by the Chicago Live Stock Exchange to act as the chairman of a committee for the purpose of appraising the salaries of the proprietors of the livestock commission concerns doing business at the Chicago stockyards. The names of the other members of that committee are Charles Kelly, Roy Kendall, Harry McNair, and Mr. Tomhave. Respondents' Exhibit No. 11 for identification is the record prepared by Mr. Mudd which was considered by me and my committee.

I think we must have put in something like eight or nine or ten hours in two days. I don't know exactly what time we started or how long we were there. My committee and I tried to consider all the information shown on that sheet surely. We started in on the volume of business a man did; the most I can say is like the amount of hogs or cattle,

whichever it was, and how it was handled. We considered the class of work that the person did as shown on the top line. Then we had before us the volume of business done as shown in the books appearing at the top of the page. [fol. 1447] Next we had the number of years' experience in the livestock commission business. We also took into consideration the years of experience in the other branches of live stock business, either with the packers or in the country raising livestock; as well as the number of years of experience in other lines of business than livestock. Also the approximate per cent of time spent in the division shown in the books following No. 8, and then the committee wrote at the bottom of each sheet the amount which we determined upon as the sum representing the fair value of each person's services in the livestock commission business for the year 1932. In every case the decision as to the sum of money shown on each sheet represents the consensus of the opinion of all of the members of the committee.

Cross-examination:

I would not say that I was acquainted with all of the proprietors of the Respondent firms where we appraised; there may be somebody that I was not acquainted with in the firm. They change occasionally, you know. They come and go. I met them in the banking business. I am—well, I usually visited the Exchange Building and called on these parties, these firms, once or twice a week, call on what I could one week and the rest the next, and all that sort of thing. That was not in preparation to make this appraisal. I say I have been doing it there for 30 years in the banking, calling on these customers, some of them every week, and [fol. 1448] then I met them in the bank every day, in the banking business.

Q. And did you mean, then, that in each case where you and your committee appraised the value of the services, that you took the information placed before you and gave consideration to no other fact, is that what you mean?

A. No, I do not mean that. I took the information put before me and I took what I knew myself personally.

Q. So, you did then take into consideration facts that were personally within your knowledge?

A. Yes.

Q. And, with reference to those proprietors with whom you had no actual acquaintance, what did you do, consider only the facts placed before you?

A. That is all I could, if I didn't know them.

I do not know for sure if at each of the conferences or meetings, all the members of the Appraisal Committee were present; they were all present at any time, anyway, I know, I do not know at the last meeting whether they were all there or not. We went through these different accounts we came to. I would have to ask somebody whether or not they were all present at the time that the figures showing what we consider their worth were written out. I cannot tell myself. I do not know for sure whether there might have been one away part of the time or another time, but anyway, they were all, every man, every member of the committee went through this thing, firm by firm, before it was signed, and the various members of the committee, going through this information, made up that nine or ten hours. I presided at the meeting. About what was said or [fol. 1449] done, nothing more than that we started in on this thing and went right at it. Every item in Respondents' Exhibit No. 11 was read to all, I was the one doing the reading, I was chairman. Lots of times there was discussion of each item. Lots of times there was not. I might possibly have suggested a figure with which the committee concurred, and somebody else might possibly start in, we did not always agree on the same figure at first. I could not tell you in how many cases we did not agree. We had to get ourselves together a little on it sometimes. I don't think there was any one particularly far apart except on some of the smaller ones. On what would be called the larger firms, the entire committee were in accord each time.

I was one of the committee to make the 1931 appraisal. It was the same committee for 1931. At the time we made the 1931 appraisal we did practically the same thing that we did for 1932 except we had to use more time on the first one going through it the first time. I couldn't say how much more time. I know we used considerably more than that because we met two or three times. When we made the 1932 appraisal, which is the present one, we had our 1931 figures before us. We did not take the 1931 figures and practically agree that the 1931 figures were correct;

it was altogether owing to the volume up and down and how it was handled. I don't think in a great many cases [fol. 1450] that the 1932 figures disagree with the 1931 figures in many respects. It is not true that we practically took the 1931 figures with very little change, but there was not enough difference in a great many cases to make any change. I stated that in the 1932 figures that we considered the volume of business; assuming that the business had fallen off 25 per cent between 1932 and 1931, we took in consideration the times and what was happening and what might happen later in lots of cases. Our figures are not exactly based on hypothesis as to the future. I do not know as we gave any particular weight to what might happen in the future. In taking the proposition that we learned in 1932 that the business had fallen off 25 percent, to what extent, either in percentage or dollars, that would affect our figures for 1931; not at all. That might possibly have some weight in some cases. I could not say any per cent. I do not know. I could not tell you that. At the time we began making our 1932 appraisal, we received no more instructions than we were told what we were there for and that was to determine the value of these different men. I do not know who told me. We had to know something; that was, I don't remember who it was told us, we were told what the object of this deal was, and that was all there was to it; it might have been Charlie Wilson or it [fol. 1451] might have been this gentleman here, Mr. Mudd. His suggestions were not written.

Our appraisal was for what we may call a proper allowance by way of compensation for the owners of the business. In lots of cases, the owner was a salesman. We were appraising the owners. Assuming that one owner does nothing but selling and another owner does nothing but management; if those were the only differences, there would not necessarily be a difference in our appraisal figures.

Q. Assume, now that an owner spends ten percent of his time in management and 90 per cent in selling, and assume that another owner reverses that, spending 90 per cent in management and 10 per cent in selling; on these facts only, what difference would you make in what we call the man's salary?

A. None.

Q. You regard, then, in your appraisal, management as being on equality with selling?

A. I do not regard it in such manner at all. I regard a man the way he handles his business, whether he handles it himself or hires somebody, if he has got the ability to hire a man to do it for him, that is all right, to sell it or anything else.

Q. But, in the example I propounded to you, you said you would make no difference between the two salaries if there was nothing that has to be considered.

A. I cannot see anything else.

[fol. 1452] Q. Now, you have testified, I believe, that you had the volume of the man's business as part of the information?

A. That entered into the case every time.

Q. What weight did you give to the volume of business done?

A. Well, we just simply went into the whole consideration of the whole matter, I couldn't give any figures or weight or volume or anything else, just the way the man handled his business and the results.

Q. Let me put it this way: as between two men, assuming that everything was equal in your mind and that up to that point you would decide that the salaries should be the same, but that you then learned that the business of one man was one-half the business of the other, what difference, then, would that make in your consideration of the salaries?

A. Well, that would not make any particular difference either.

Q. All right. Now you have testified that it is the way the man would handle his business?

A. Yes.

Q. Is that the major item in your mind?

A. That is the only thing there is in the whole deal.

Q. The only thing, the way the man handles his business. Now, just what do you mean by that?

A. Well, one man might be able to hire the right kind of people to do his business in the right kind of a way, and at a less overhead than somebody else could.

Q. That, then, would go to the amount of profit, if he were able to hire men and do the business at less overhead, is that correct?

[fol. 1474] in which they specialize, and the costs used for this purpose are those applying to the respective species. The results of this study are shown below and indicate clearly that there is no correlation between salary and unit costs, unless it be that the higher salary ratings as given by the Appraisal Committee are to be found in firms having the lower unit costs.

No. of Owners	Appraised Salary	No. of Cars	Unit Cost
	Cattle & Calves		
1	$27,500	4,496	$20.67
2	25,000	7,598	21.62
1	22,000	3,189	21.06
1	20,000	5,334	17.62
1	18,000	2,126	20.53
8	15,000	17,088	22.58
9	12,000	8,909	26.47
12	10,000	14,361	23.74
3	9,000	1,584	32.29
4	8,500	2,060	23.26
10	8,000	10,265	26.10
1	7,500	830	27.35
4	7,000	3,531	26.15
1	6,500	1,012	32.83
9	6,000	7,137	27.81
1	5,500	1,012	32,83
18	5,000	17,882	23.86
2	4,500	549	29.19
7	4,000	3,174	26.02
7	3,600	1,355	27.98
3	3,500	1,145	27.22
7	3,000	2,710	26.15
2	2,700	245	33.02
6	2,500	2,777	26.62
1	2,400	625	29.78
3	2,000	201	36.69
1	1,800	68	32.06
3	1,500	225	20.60
7	1,200	426	24.85

No. of Owners	Appraised Salary	No. of Cars	Unit Cost
	Hogs		
1	$18,000	1,543	$19.75
2	15,000	2,266	26.11
5	10,000	5,442	22.64
1	9,000	1,273	19.82
2	8,000	1,474	21.94
1	7,500	996	17.44
2	7,000	1,144	23.75
6	6,000	3,510	21.28
3	5,000	2,458	19.32
1	4,500	878	18.67
6	4,000	3,312	22.43
1	3,500	634	17.54
7	3,000	2,698	21.08
1	2,700	177	25.61
5	2,500	2,985	17.33
1	2,100	178	19.17
2	2,000	220	24.00
5	1,200	292	27.29
	Sheep		
1	12,500	1,079	$28.70
1	12,000	2,122	14.66
2	6,000	835	22.48
1	3,600	280	19.09
1	3,000	143	27.71

(h) Aside from my study of the possible relationship between salary levels and unit costs, and regardless of what may be the opinion as to the reasonableness of salary levels determined upon by the Appraisal Committee, it is fair to assume that the several owners placed on the same level by that Committee rendered service of somewhat equal value. Therefore, as a test of the Government's use of profits in lieu of salaries for the purpose of arriving at costs, I will group together those owners who were given the same rating by the committee and compare these ratings with the profit-salaries which were allowed in costs by the

Government. I shall also show individual appraised salaries in comparison with profit-salaries.

[fol. 1475]

Firm No.	Man No.	Appraised Salary	Profit-Salary	Firm No.	Man No.	Appraised Salary	Profit-Salary
48	1	$18,000.00	$5,775.83	50	1	$2,700.00	$1,869.35
				50	2	2,700.00	1,869.34
54	1	15,000.00	6,017.45	50	3	2,700.00	1,869.34
16	1	12,000.00	2,609.76	101	1	2,500.00	1,453.96
				82	3	2,500.00	1,967.78
19	2	10,000.00	5,300.69	95	1	2,500.00	1,677.36
19	3	10,000.00	5,300.66	39	1	2,500.00	2,576.31
19	1	10,000.00	5,300.70	44	1	2,500.00	2,117.73
78	1	10,000.00	9,430.35				
				15	1	2,100.00	2,043.35
27	1	7,000.00	5,917.47				
				98	1	2,000.00	390.56
35	1	6,000.00	5,907.93	68	1	2,000.00	2,351.88
74	1	6,000.00	3,370.57	65	1	2,000.00	1,131.18
82	3	6,000.00	4,248.76	86	1	2,000.00	2,087.20
8	2	5,000.00	3,985.65	3	1	1,875.00	3,312.51
8	3	5,000.00	3,919.62				
79	1	5,000.00	1,874.78	111	1	1,833.33	1,310.87
28	1	4,000.00	2,978.37	32	1	1,800.00	1,224.71
64	1	4,000.00	4,792.84				
91	1	4,000.00	1,567.34	5	1	1,500.00	1,054.96
				52	1	1,500.00	2,279.23
103	1	3,600.00	3,473.99				
87	1	3,600.00	2,314.18	31	1	1,200.00	204.00
87	2	3,600.00	3,884.18	41	1	1,200.00	263.89
67	1	3,600.00	2,016.00	60	1	1,200.00	712.00
				46	2	1,200.00	893.63
79	2	3,500.00	1,874.77	46	1	1,200.00	893.63
82	1	3,500.00	3,713.80	49	1	1,200.00	368.18
				76	1	1,200.00	1,404.47
12	1	3,000.00	35.12	102	1	1,200.00	1,300.32
84	1	3,000.00	3,754.58	88	1	1,200.00	984.97
14	1	3,000.00	1,896.82				
17	1	3,000.00	1,841.06	7	1	437.50	138.65
47	1	3,000.00	1,285.28				
9	1	3,000.00	4,907.88				
16	2	3,000.00	529.77				

(i) There can be no doubt whatever as to the need for adjusting the Government's costs so that they would reflect the value of services rendered by owners, and I know of no better method of handling a situation of this kind than the one employed by respondents, namely, the appointment of a competent and disinterested Appraisal Committee. And, from an accounting standpoint, it is my opinion that the values placed on the owners' services by the Committee are reasonable and fair both to the owners and the shippers as I have just indicated.

[fol. 1476] 4. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Administration Salaries Not Charged to Branches

(a) It is clear that where livestock commission firms have branches on other markets and the administration or headquarters organizations perform service for one of more of such branches, or where one branch performs service for another, the cost of such service should be charged to the branch benefitted by it and credited to the administrative office or the branch rendering the service. The Government has not taken such expenses into consideration in arriving at its costs.

(b) In the case of John Clay & Co., the affairs of its branches are administered by a general organization located in the Rookery Building, downtown, Chicago. It has been estimated that the cost of time devoted by the general organization to the Chicago branch located in the Union Stock Yards, was $13,000 for the year 1932, and this amount was properly charged into the accounts of the Chicago branch. However, the Government has eliminated the entire amount from the accounts in arriving at its costs. To this extent, the Government's costs with respect to this firm are under-stated.

(c) In the case of Merrion & Wilkins, the headquarter office at the Chicago branch devoted a part of its time to the firm's branches at Denver and Ogden and it was estimated that the cost of the time so devoted amounted to $1,200 for the year 1932. In the case of Martin Bros. & Co., the headquarter office at the Chicago branch devoted a part of its time to the firm's branch at Omaha and it was estimated that the cost of the time so devoted amounted to $700. However, the Government did not take these amounts into consideration in arriving at its costs for these firms and, to this extent, the costs are over-stated.

(d) In all these cases, the respondents have made the necessary additions to or deductions from the Government's figures in arriving at respondents' costs in order that the costs of operations at Chicago might be properly compared with the commissions earned at Chicago.

5. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Expenses of Other Branches Not Charged to Chicago

(a) In the case of Wm. R. Smith & Son, its branches at Denver and Omaha expended an amount estimated to be $2,722.00 for the benefit of the Chicago branch during the year 1932. The Government, in arriving at its costs, failed to take this expense into consideration and to that extent the costs of this firm's operations are under-stated.

6. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Interest on Capital Requirements

(a) There is a difference between the Government's and the respondents' calculation of interest on capital requirements amounting to $11,109.55. This difference is due primarily to the fact that the Government has arbitrarily placed a value of $750.00 each on memberships owned by respondents in the Chicago Live Stock Exchange instead of $1,006.43 as found by respondents, and secondarily because the Government used an interest rate of 7% as compared with 8% used by respondents.

[fol. 1477] (b) The respondents, in determining upon the fair value of memberships in the Chicago Live Stock Exchange, ascertained the actual cash consideration which was paid for each membership sold during the last five years 1928 to 1932 and by averaging these amounts so paid arrived at the value of $1,006.43. The details of these sales are shown on schedule No. 12-a, page 11. This record of sales will show that the amount of $750.00 used by the Government represents a "depression" value while the commission rates which will be fixed as a result of this investigation will doubtless be in effect for some years after the depression has passed.

(c) In connection with the difference due to variation in interest rate, it is noted that 7% was used by the Government in arriving at costs, while Dr. Dozier of the Department of Agriculture, an expert witness in this case, testified that 6% should be allowed in the case of fixed capital and 7% in the case of working capital. It is my understanding of Dr. Dozier's testimony that no consideration

was given to the element of uninsurable risk involved in the handling of capital requirements and I therefore believe that the rate of 8% as used by the respondents is justified.

7. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Country Selling & Buying Salary Credit

(a) Country selling and buying service is an off-the-market activity not governed by prevailing tariffs, therefore, the costs of rendering such service should be eliminated. There was but little such service rendered during the year 1932 and records were not kept in such a manner as to separate the cost of this service from on-the-market service. In arriving at the estimated cost of this country service in order that it might be deducted from market costs, I have taken that proportion of the total selling and buying salaries as is represented by the relationship between the number of cars sold on and off the market. Schedule No. 7 shows how these amounts were arrived at with respect to each of the 13 firms involved.

8. Consist of Respondents' Costs

(a) The respondents' aggregate costs of $3,181,326 consist of:

Salaries of owners and employees, As per schedule No. 6	$2,488,359.00
Expenses and accruals, As per schedule No. 8	$ 638,144.00
Interest on invested capital, As per schedule No. 12	$ 57,099.00
	$3,183,602.00
Less country selling & buying credit, As per schedule No. 7	$ 2,276.00
Respondents' aggregate costs	$3,181,326.00

[fol. 1478] 9. Salaries of Owners and Employees

(a) The total salaries of owners and employees for each of the respondent firms are summarized on schedule No. 6. The figures in the first column on this schedule shows the

amounts of these salaries as they were taken into the Government's costs. The second column shows the owners' salary appraisal adjustments which were made by respondents, and the adjustments due to administration salaries not charged to branches, both of these having been previously explained. The third column shows the adjusted total salaries as taken into respondents' costs, and the remaining columns show the distribution of these salaries to species, etc.

(b) The details in support of schedule No. 6 may be found on the so-called "Questionnaire" forms identified as Government Exhibit No. 50. The "Questionnaire" forms are arranged so that a separate column may be used for each owner. Their names are shown in the headings of the columns and, in spaces provided thereunder, information has been shown as to their "Government No.", whether "Owner" or "Employee", the "Class of Worker", the "Number of Months Worked", the "Amount of Compensation", the "Percent of Time Devoted To", the commission or other business, and the "Distribution of Time Devoted to the Commission Business" as between "Selling", "Buying", "Yarding", "Office Work", "Business Getting", and "General Supervision".

(c) A separate "Questionnaire" form was provided for each firm. The Government filled in all of the information concerning the identity and compensation of each owner and employee. These forms were then turned over to me to have the "Percent of Time Devoted To" the commission and other business, and the "Distribution of Time Devoted to the Commission Business" ascertained from each firm and inserted. After this had been done, these forms were returned to the Government auditors who applied the distribution percentages to the amounts of compensation and thus arrived at the salary distribution to species and functions separately for each owner and employee and in total for all.

(d) At this point, these "Questionnaire" forms were again turned over to me and I inserted the amounts of adjustments arising out of the appraisal of owners' salaries, and distributed these adjustments to species and functions on the same percentages as were used for the respective owners originally. These "Questionnaires", therefore,

were made to indicate the salaries and their distributions as used both by the Government and the respondents, respectively.

(e) In the preparation of these "Questionnaires", the object of showing the "percent of Time Devoted To" the commission and other business was to exclude from the salary element of costs for each firm the proportion, if any, which represented time devoted to the loan or any other outside business, or to the clearing of accounts of other commission firms, or to selling, buying or yarding of other firms' livestock. Then, in the case of commission firms receiving such service, the amount paid for it was included on their "Questionnaire", and distributed to species and functions. In this way, the salaries as taken into the costs of each firm represented only that part of the owners and employees services which were devoted to the handling of that firm's commission business.

(f) The "Distribution of Time Devoted to the Commission Business" as between species and functions was arrived at on the basis of estimates made by owners and employees, except in the case of country trips which was based on the in-and-out register maintained in the Chicago Live Stock Exchange office. Inasmuch as salesmen, yardmen and other outside workers specialize as to species, that part of their distribution was actual, and since these classes of workers are mainly assigned to but one function, that part of the distribution was also practically actual. The selling, buying, yarding and business getting salaries, the distribu- [fol. 1479] tion of which was almost entirely actual, represent approximately two-thirds of the aggregate costs. Similarly, the office workers, who to a large extent specialize in certain functions, furnished me with the distribution of their time to functions, such as the preparation of account sales, account purchases, bookkeeping, circulars, etc., it being impractical to estimate the distribution of office workers' time as between the various species.

(g) It will be noted that the distribution of salaries as just explained, is limited to the distribution as between the various species, or between the various functions, and has not been carried to the point where distribution becomes necessary as between the various modes of arrival, such as "Straight Cars—Single Ownership", "Mixed Cars—

Plural Ownership", "Drive-ins", etc. The frequent interchange and joint use of time as devoted to the various modes of arrival by yard workers made it impracticable to estimate the amount of time devoted to each mode of arrival for any considerable period of time past, therefore, this distribution had to be accomplished by the use of a time-study which will be hereinafter described. Similarly, the frequent interchange and joint use of time as devoted to species and to modes of arrival by office workers made it impracticable to estimate the amount of time devoted to each species and mode of arrival for any considerable time past and so this distribution was made on the basis of statistics which will also be hereinafter described.

(h) At this point attention is called to the fact that the respondents' and the Government's distributions of salaries of owners and employees are only in agreement to the extent that they could be distributed "directly" to species and to functions as indicated on the so-called "Questionnaires" and on schedule No. 6. Later on, and in connection with its cost-study, the Government made further distributions of "indirect" salaries to species, and of all salaries, to modes of arrival, and in so doing employed statistical bases with which the respondents cannot agree. The differing results are highly important. I shall now explain the methods and bases used by the respondents in distributing the several classes of salaries to species and to modes of arrival and further on in this testimony I shall compare these methods, and the results, with those used by the Government.

10. Time-Study of Yard Operations

(a) A time-study of yard operations, covering the activities of the salesmen, buyers, yardmen and other yard workers of nineteen representative commission firms, was made for the four weeks period from September 19th to October 16th, 1932. The commission firms selected to participate in this time-study were chosen because they were representative as to volume of business handled (large, small and medium), as to species handled, as to various locations in the yards in relation to the unloading docks and scales, and as to the general character of the organizations and business and the ability and willingness of

owners and employees to keep correct time records according to instructions.

(b) The firms selected are listed at the bottom of schedule No. 10 where the volume of business handled by each and by all these firms is shown by species and in total for the entire year and for the time-study period. It will be noted that these 19 firms handled:

from 3,130 to 149,778 head of cattle & calves,
from 2,806 to 129,004 head of hogs, and
from 827 to 515,982 head of sheep

during the year 1932, covering a wide range of volume, and yet their combined volume represented 45.83% of all cattle and calves, 39.77% of all hogs, and 36.71% of all the sheep handled by all the respondent firms. During the time-study period of four weeks, the time-study firms handled [fol. 1480] 276,129 head of livestock, or 7.59% of their entire 1932 volume. It will also be noted by comparison with statistics shown on Schedule No. 22, that the percents for each species representing the relative number of head arriving as "Straight Cars—Single Ownership", "Mixed Cars—Plural Ownership", "Drive-ins", etc., during the entire year 1932 are remarkably close to those for the time-study period. Therefore, as to species, volume, and character of volume, there is little doubt that the time-study period and firms selected were thoroughly representative.

(c) The mechanics of the time-study involved the use of a morning and afternoon time-card, Exhibit No. 13, a daily time report, Exhibit No. 14, a daily volume report, Exhibit No. 15, and summaries, Exhibit No. 16. The time-cards were kept by the individual salesmen, yardmen and other yard workers. The daily time-reports which covered the in-and-out time of each yard worker, were kept by the office man of the respective firms. The daily volume-reports, showing the number of head of each species under each mode of arrival sold during the day, were also kept by the office man of the respective firms. The summaries, to which the time-cards, time-reports, and volume-reports were posted, were kept by my own employees. Before posting to summaries, the time reported on time-cards by each yard worker was checked against the in-and-out time of that worker as shown on the daily time-report, so that all of the time of time-study workers was accounted for.

(d) The time-cards used provided a separate column for each of the classes of work performed regularly or otherwise by yard workers. Office work and country trips were also provided for although merely for the purpose of insuring a check on the total time and the inclusion of all yard time. In the columns provided for "receiving", "sorting and grading", "showing and selling" and "weighing", spaces were provided in which the time was reported as between modes of arrival. In the columns for other classes of work, no sub-division was required. Both the morning and afternoon time-cards were blocked out so as to provide for a separate reporting for each hour of the day, the object being to compel the recording of time at frequent intervals in order to insure greater accuracy. These time-cards were carried by the workers in the yards and in order to insure the carrying out of instructions as to the proper recording of time and the hourly recording of time, two of my own employees who were familiar with the yards and the workers, spent a very large part of their own time out in the yards circulating among the workers and supervising the time-recording.

(e) When the daily time-reports and daily volume-reports were prepared by the office man for the respective time-study firms and the time-cards were turned in to them by their respective yard workers, the office man made a check to determine that the time as reported by each yard worker agreed with the time-report, and that the modes of arrival to which time had been charged by the yard workers were in agreement with the volume-report. When these records were forwarded to my office, a similar check was made from an accounting standpoint and where errors were apparent, the yard workers or office men were interviewed, and corrections were made, if necessary.

(f) In the distribution of yard workers salaries, as previously explained, we ascertained the amount of salaries chargeable to each species and to each function, therefore, in summarizing the time-study results for use in connection with the further distribution of such salaries as between modes of arrival, it was necessary that the time-study summary also observe the "species" and "functional" classifications. As a means of accomplishing this, separate summary sheets were used for "salesmen and buyers" and for "yardmen" and, when the time-study results were further

summarized as shown on schedule No. 10, the interchange or overlapping of functions as between these two classes of workers was observed by setting up one summary for "selling and buying" and another for "yarding". In this way, the showing and selling, and buying, performed by [fol. 1481] yardmen was included in the summary for "selling and buying" and the receiving and weighing performed by salesmen was included in the summary for "yarding".

(g) On the summary of time-study results, schedule No. 10, under both "selling and buying" and "yarding", it will be noted that the direct time-charges in minutes have been shown first and sub-totaled, then the "stand-by" time has been distributed to the several modes of arrival on the basis of the time directly assigned. And, under "yarding" the so-called "yarding" time has been distributed to modes of arrival on the basis of the relative number of head handled. Then the total minutes have been shown, as well as the number of head handled, and the number of minutes per head have been calculated therefrom. On the last line, the percent of time which the minutes-per-head for each mode of arrival bears to the total minutes-per-head for each species, has been shown. These percents merely represent the division of time on a one-head basis, and were not used for any other purpose. The figures used as a weight-factor for distribution purposes were those indicating the number of minutes-per-head.

(h) Before proceeding, I would like to explain the class of time called "stand-by". There are two classes of waiting-time encountered in yard operations, both of which occur when salesmen, buyers, or yardmen reach a situation where, for one unavoidable reason or another, they cannot proceed with their duties. This occurs, for example, when a yardman is waiting for a shipment to arrive, or to be delivered to him at the unloading dock and it also occurs when a salesman is waiting for a buyer. Under one class of waiting-time, the worker knows the particular consignment or mode of arrival which causes the waiting-time and, in such a case his time was charged directly to that particular mode of arrival. Under the other class of waiting-time, the worker does not know the particular consignment or mode of arrival which causes the waiting-time and, in that case his time was charged to "stand-by".

(i) I would also like to explain that the class of time called "yarding" on the time-cards covers the cleaning of pens, watering, feeding, or other similar work in the yards, usually performed by yardmen but sometimes by salesmen also.

(j) As a means of refining the results of the time-study so as to indicate for each function of service performed, the average number of minutes-per-head devoted to one mode of arrival as compared with another, sub-calculations have been made as follows:

Function	Straight S/O	Straight P/O	Mixed S/O	Mixed P/O	Drive-Ins	Seconds
Cattle & Calves						
Receiving	1.989	1.895	1.966	2.074	3.450	0.346
Sorting & Grading	1.508	2.172	1.884	1.851	1.626	0.683
Showing & Selling	2.660	2.603	3.123	3.620	4.738	3.311
Weighing	2.064	2.350	2.524	2.458	3.628	1.872
Stand-By	2.207	2.420	2.545	2.679	3.612	1.655
Yarding	0.761	0.761	0.762	0.761	0.761	0.761
Total	11.189	12.201	12.804	13.443	17.815	8.628

[fol. 1482]

Function	Straight S/O	Straight P/O	Mixed S/O	Mixed P/O	Drive-Ins	Seconds
Hogs						
Receiving	0.679	0.648	0.864	0.777	1.200	0.114
Sorting & Grading	0.423	0.618	0.678	0.783	0.600	0.159
Showing & Selling	0.819	1.077	0.968	1.256	1.537	1.192
Weighing	0.602	0.734	0.788	0.952	1.019	0.574
Stand-By	0.889	1.078	1.162	1.324	1.536	0.694
Yarding	0.211	0.211	0.211	0.211	0.212	0.211
Total	3.623	4.366	4.671	5.303	6.104	2.944
Sheep						
Receiving	0.102	0.127	0.176	0.213	0.517	0.143
Sorting & Grading	0.220	0.262	0.279	0.329	0.472	0.174
Showing & Selling	0.279	0.408	0.472	0.582	0.734	0.686
Weighing	0.162	0.282	0.240	0.389	0.530	0.386
Stand-By	0.204	0.303	0.343	0.421	0.588	0.385
Yarding	0.063	0.063	0.063	0.063	0.063	0.063
Total	1.030	1.445	1.573	1.997	2.904	1.777

11. Respondents' Distribution of Selling and Yarding Salaries as Between Modes of Arrival

(a) The time-study results, as just explained, were used as a weight-factor in the distribution of selling and yarding salaries for the purpose of weighting the volume so as to establish proper relationships between the several modes

of arrival as influenced by the relative unit-of-time devoted to each. In other words, the number of head of each species actually handled by each firm during the year 1932 under each mode of arrival was multiplied by the respective time-study minutes-per-head, which produced the "head-minutes" or "weighted number of head" for each mode of arrival for each firm. This was done separately for "selling" and for "yarding" so that each of these two classes of salaries would reflect its own time-study weight-factor and be distributed independently of the other.

(b) Attention is here directed to the fact that the time-study minutes-per-head have been used as differentials rather than specific time measurements, and that they have been applied as units-of-time rather than units-of-cost. This distinction explains and justifies their application to all firms and to the volume handled during the entire year. Whether one firm handled more or less volume than another, or whether the average four-weeks' volume during the year is more or less than that handled during the four-weeks time-study period, or whether the volume is high or low, or is constant or fluctuating, makes no difference whatever under the method used in applying the time-study results.

(c) The distribution of all salaries and expenses is shown on work-sheets, Exhibit No. 17. However, at this time, I shall confine my explanations to the distribution of selling and yarding salaries because no other classes of salaries were influenced by time-study weight-factors. The distribution of these two classes of salaries will be found in the upper part of these work-sheets. At the top of the left-hand column you will find that I have shown the "Actual Num-[fol. 1483] ber of Head", as taken from schedule No. 13. "Time-study Minutes (S&B)" and "Time-study Minutes (YDG)", as taken from schedule No. 10. Then you will find that I have applied the actual number of head to these time-study weight-factors, respectively, and, as previously explained, arrived at the "Weighted Number of Head (S&B)" and the "Weighted Number of Head (YDG)". Based on the "Weighted Number of Head" for each mode of arrival, I have shown the percents to sub-total for each species, and by applying these percents to the total "selling salaries" and "yarding salaries", respectively, for each spe-

cies (as taken from schedule No. 6) these salaries were distributed to modes of arrival.

(d) In this way, the distribution of selling and yarding salaries, which represent about two-thirds of the total costs, was accomplished as between modes of arrival on the basis of actual performance.

12. Respondents' Distribution of Credit for Country Selling and Buying Salaries

(a) An explanation has already been given as to the purpose of this credit and as to the method employed in arriving at the amounts as are shown for this class of service on schedule No. 7. After having allocated these credits to species in the manner indicated, further distribution was made on the work-sheets identified as Exhibit No. 17 to modes of arrival on the basis of relative carlots. There were only 303 carlots of livestock sold or bought in the country by respondents during the year 1932, and this represents but 2/10th of one percent of the total volume for that year.

13. Respondents' Distribution of Office Salaries as Between Modes of Arrival

(a) As previously explained, office salaries were distributed to functions, such as preparing "Account Sales", "Account Purchases", and "bookkeeping, Etc." on the so-called "Questionnaire" forms and then summarized on schedule No. 8. At that point, the distribution could not be carried to species or to the modes of arrival thereunder because the frequent interchange and joint use of time rendered such a distribution impracticable either on the basis of estimates or a time-study, therefore, some statistical basis had to be employed for that purpose.

(b) The determination as to what statistical basis should be used for this purpose did not permit of the free use of judgement in view of the fact that there was a limited number of bases available from which to choose. We had statistics as to the "number of head", "number of cars", "number of decklots", "number of drafts", "number of owners", "number of account sales", and "amount of commissions". In this case, as in all cost accounting practice,

no basis which might be employed could be expected to operate perfectly throughout, and so the selection of a proper basis was made by selecting from those available the one which resulted in the least amount of inequality. As a cost-study, such as the one under consideration here, involves departmental or functional classifications where different statistical bases of apportionment must be used, it is customary to select bases of apportionment so that these slight inequalities will operate to offset each other.

(c) In the selection of a basis for the distribution to species and to modes of arrival of that part of office salaries devoted to the preparation of "account sales", I chose the "number of drafts" as more nearly representing the unit of work performed than any other basis available. It is a well known fact, however, and testimony in this case has so indicated, that the preparation of account sales for certain modes of arrival involve the performance of cer- [fol. 1484] tain kinds and quantities of work which do not attach to other modes of arrival and, to that extent, the inequities which I have just mentioned have opportunity to express themselves. This applied more particularly to the preparation of account sales covering "seconds" where simplicity prevails, but in the case of "seconds" the bases employed in other departments of the costs have undoubtedly operated to fully offset any possible over-charge. Furthermore, the weight which the cost in any one department so affected bears to the total costs, must be considered as indicating the relative importance of such inequalities, if any, which may exist.

(d) In the case of "seconds" the salary expense charged against "account sales" amounts to only 7% of the total cost of handling "seconds", which indicates that any possible inequality in the cost of this item has but little importance and could not affect the total unit-cost.

(e) As a further indication that the basis of "drafts" used in the distribution of "Office Salaries—Account Sales" to modes of arrival, particularly "seconds", operates fairly in spite of the lesser amount of work per account sale, the following records for 1932 are noted:

In the Case Of	No. of Acct. Sales	No. of Cars	No. of Acct. Sales Per Car
Cattle & Calves			
Straight Cars—Single Ownership	32,919	46,016	.72
Seconds	27,054	9,747	2.78
Hogs			
Straight Cars—Single Ownership	13,470	14,400	.94
Seconds	4,152	1,648	2.52
Sheep			
Straight Cars—Single Ownership	5,912	7,511	.77
Seconds	901	221	4.08

In the Case Of	No. of Drafts	No. of Acct. Sales	No. of Drafts Per Acct. Sale
Cattle & Calves			
Straight Cars—Single Ownership	169,984	32,919	5.17
Seconds	57,182	27,064	2.11
Hogs			
Straight Cars—Single Ownership	55,101	13,470	4.09
Seconds	6,273	4,152	1.51
Sheep			
Straight Cars—Single Ownership	24,748	5,912	4.19
Seconds	1,634	901	1.80

The comparison has been made with "Straight Cars—Single Ownership" because the amount of work involved in the preparation of account sales for this mode of arrival is less than any other class of business, except "seconds". However, it will be noted that from 4 to 6 times as many account sales per-car were prepared for "seconds" while this class of business had less than one-half as many drafts [fol. 1485] per account sale. In other words, even though the units of work (which admittedly involve less work per unit) were 4 to 6 times as great, "seconds" were charged with less than one-half the normal proportion of expense which attached to the work.

(f) In the case of office salaries devoted to the preparation of account purchases, distribution was made as between species on the basis of the "number of drafts" and for the same reason given in the case of account sales.

(g) In the case of "other—Office Salaries" the work performed is of a miscellaneous and general character which is not directly influenced by the number of drafts, but rather by the general business situation and volume. The "number of carlots" seems to be the most acceptable yard-stick for this class of work and this is the basis which was used and, although here again some inequalities may possibly

occur as between modes of arrival, they tend to offset others just referred to.

(h) In the case of "drive-ins" and "seconds", the business is not handled in carlots but, for cost accounting purposes it is necessary to calculate the equivalent number of carlots in order to provide a common denominator. The calculation for these two classes of business was based on the rail-line carlot experience, because the number of head per consignment in the case of "drive-ins" and "seconds" is very much smaller than in the case of rail-line shipments, the number of cars thus calculated does not fully represent the amount of miscellaneous office work involved on account of these two classes of business. However, the item of "other office salaries" amounts to only 6.2% of the total expense, from which it may be seen that any possible inequality which might exist would be unimportant, and offsetting.

14. Respondents' Distribution of Business Getting Salaries as Between Modes of Arrival

(a) Business getting salaries were also distributed on the so-called "Questionnarie" forms as between "country trips" and "circulars, Correspondence, etc." and as between species whenever possible. A summary of these salaries may be found on schedule No. 6. As previously explained, the amount of salaries charged to "country trips" was calculated from the actual amount of time spent in the country as shown by the in-and-out register in the Exchange office. The distribution to species was estimated by the individual owners or employees who made the trips. The amount of salaries charged on the "Questionnaires" to "circulars, correspondence, etc." was estimated by those concerned and so was the distribution to species, whenever possible.

(b) The further distribution of "business getting" salaries to modes of arrival was made on the basis of the relative number of carlots as indicated on the work-sheets, Exhibit No. 17. Business getting—element "A"—relates to "circulars, correspondence, etc." and element "B" relates to "country trips". It will be noted that no business getting salaries have been charged to "seconds", and this was

because no business-getting effort is devoted to this class of business, except perhaps in the daily contacts which take place in the yards incidental to other activities.

(c) At this point, I would like to explain that in the case of firm No. 31—Fred Freeman, a charge appears against "business getting—country trips" although the volume indicates that Mr. Freeman's business was confined to "seconds". This was not discovered until the cost figures were [fol. 1486] almost completed, and an investigation of the situation brought out the following explanation. Mr. Freeman, primarily, is an employee of firm No. 81—Rosenbaum Bros. & Co., but, secondarily, sells "seconds" on his own account. In drawing off the record of his country trips from the Exchange register, his time in the country was inadvertently charged against his own operations instead of against Rosenbaum Bros. & Co., for whom the trips were actually made, and in the natural course of events the charge was made against "seconds". At the time this situation was discovered, the cost figures were almost completed and in view of the fact that the charge amounted to only $12.00 under "cattle & calves" and $12.00 under "hogs", an upset of all the cost figures was avoided by transferring these amounts to the proper class of service on the cost sheets for firm 31, although the transfer, to be absolutely correct, should have been made from firm 31 to firm 81. However, the transfer, as it was made, fully corrected the situation as to mode of arrival which is the important consideration, and did not, in any way, disturb the accuracy of the total costs for each of these firms.

(d) The use of the carlot basis in the distribution of business getting salaries was selected because business getting trips and other activities are primarily intended to attract volume, particularly carload business and time and effort was devoted accordingly. The effort to secure "drive-in" business is largely incidental. It has previously been explained that the carlot basis favors "drive-ins" because the method of calculating equivalent carlots has a tendency to reduce the number of units against which distribution is made to this class of business, however, in the case of business getting salaries this is as it should be in view of the fact that a lesser effort is put forth.

15. Respondents' Distribution of Administration Salaries to Species and Modes of Arrival

(a) Administration salaries cover the time devoted to general supervision. A summary of the amounts of such salaries may be found on schedule No. 6. The amount charged to this function is relatively small because, as a rule, the personnel is highly specialized as to species and functions and time devoted to supervision can be allocated directly. On the other hand, and almost without exception, even the owners are workers—usually salesmen.

(b) When the time devoted to general supervision could be allocated to species, the salary distribution was so shown on schedule No. 6. In other cases, such salaries were distributed to species and to modes of arrival by use of the work-sheets, Exhibit No. 17, and on the basis of the relative number of carlots.

(c) The carlot basis is the best for this purpose because it more nearly expresses the relationship of supervision to the business in general. The explanation given in this respect under "other office salaries" applies also to administration salaries. Administration salaries amount to only 1.3% of the total costs.

16. Expenses and Accruals

(a) The total expenses and accruals of each of the respondent firms are summarized on schedule No. 8. The figures shown in the first column on this schedule were taken from Government Exhibit No. 49 at pages 49 to 51. These figures represent the result of audits made by the Government accountants, to and from which certain additions or deductions were made as were also indicated on Government Exhibit No. 49 at pages 55 to 60. To the Government's figures as shown in the first column on my schedule No. 8, I have added an amount of $2,722.00 which will be found opposite firm No. 90 in the second column on this schedule [fol. 1487] and which has already been explained. In the third column of schedule No. 8, the total expenses for each firm as taken into respondents' costs (representing the sum of columns 1 and 2) are shown, and the distribution of these amounts have been indicated in the remaining columns on this schedule.

(b) The distribution of "direct" expenses to functions and to species was also taken from Government Exhibit No. 49 at pages 118 to 132, except as affected by the amount shown in column 2 of schedule No. 8 and except that the "horse and saddle" expense which was shown by the Government under yarding expense has been shown by respondents under selling expense in view of the fact that horses are not used in yarding but in selling service.

(c) At this point, attention is called to the fact that the Government's distributions of expenses has only been accepted insofar as they have been able to make them directly to functions and to species. The distribution of "indirect" expenses to species, and the further distribution of both "direct" and "indirect" expenses made by the Government later on in its cost studies as between modes of arrival were not accepted because the respondents do not agree with the statistical bases used by the Government for those purposes. I shall now explain the methods and bases employed by respondents in distributing the several classes of expenses (as shown on work-sheets, Exhibit No. 17) and further on in this testimony I shall compare these methods and the results with those used by the Government.

17. Respondents' Distribution of Selling Expenses

(a) Selling expenses were distributed by respondents as between modes of arrival on the same basis as was used for the distribution of selling salaries, namely, the "weighted number of head". A full explanation of this basis has already been given. Selling expenses represent the use by salesmen of horses and saddle in the cattle yards, therefore, it is obviously correct to distribute this expense to modes of arrival according to the relative amount of time devoted by salesmen to each.

18. Respondents' Distribution of Yarding Expenses

(a) "Indirect" yarding expenses were distributed by respondents to species, and both "direct" and "indirect" yarding expenses were distributed as between modes of arrival on the same basis as was used for the distribution of yarding salaries, namely, the "weighted number of head". The manner in which this basis was determined has previously been explained. As in the case of selling expenses,

and in accordance with universal practice in cost-accounting, miscellaneous expenses attaching to services rendered should be so distributed as to follow the labor cost of the service performed.

19. Respondents' Distribution of Office Expenses

(a) Except in the case of two firms who specialize in but one species, office expenses could not be allocated "directly". The "indirect" office expenses, as in the case of selling and yarding expenses, were distributed to species, and both the "direct" and "indirect" office expenses were distributed as between modes of arrival by respondents on the basis of distributed office salaries so that the expense would follow the office labor distribution for reasons already given.

[fol. 1488] 20. Respondents' Distribution of Business Getting Expenses

(a) Since there are two classes of activities in business getting, namely, "country trips" and "circulars, correspondence, etc.," and in order that their distribution to species (and later to modes of arrival) might follow the labor costs where the expense was joined with it, these two classes of expense had to be separated. Schedule No. 9 shows how this separation was accomplished by the respondents and how the "country trip" part of these expenses were distributed as between species.

(b) The figures shown in the first two groups of columns on this schedule, namely, those identified as "Element A" and "Element B" were taken from Government Exhibit No. 49 at pages 79 to 81, however, as in the case of other classes of expense, the respondents have not accepted the Government's distribution of "indirect" expenses because they are not in agreement with the basis used by the Government. Therefore, in the next group of columns the "Element B" indirect expenses have been redistributed to species on the basis of distributed business-getting salaries for country trips. Then the "Element B" direct expenses and the distributed indirect expenses were brought together so as to indicate the total of all "Element B" expenses separately for each species. As completed, schedule

No. 9 shows "Element A" expenses (which are "indirect") and "Element B" expenses (which are "direct") as distributed to species.

(c) In the distribution of "Element A" expenses to species, the basis of relative carlots was used. These expenses cover—advertising $164,717, and entertaining $11,776. The "carlot" basis of distribution was used because it expresses the object of business getting, namely, volume. The practice of distributing expenses on the same basis as salaries was not followed in this particular instance because almost all of this expense is for advertising which has no relationship to labor effort.

(d) The further distribution of both "Element A" and "Element B" expenses as between modes of arrival was made on the basis of relative carlots because the object of all business getting activities is to maintain or increase volume, and both effort and expense are directed accordingly.

21. Respondents' Distribution of Administration and General Expenses

(a) The administration and general expenses are almost entirely "indirect" and, as previously explained, the respondents do not agree with the basis which the Government has employed for their distribution. The respondents have, therefore, redistributed these expenses, as indicated on the work-sheets, Exhibit No. —, to species and as between modes of arrival on the basis of the relative number of carlots. The classification of these expenses indicate their general character and it is believed that "carlots" more nearly expresses the relationship between supervision and the business in general. This is the same basis which was used to distribute administration salaries.

[fol. 1489] 22. Respondents' Distribution of Risk Expense

(a) More than 80% of the risk expenses are "indirect" and are general in their relation to the business. The remaining 20% represent mortgage and theft insurance premiums which are paid for on a per-car basis and were so allocated to species by the Government. The respondents have also distributed the "indirect" risk expenses to species and as between modes of arrival on a per-car basis because the

analysis of risk expeness as found at pages 91 to 93 of Government Exhibit No. 49 shows that more than two-thirds of such expenses relate to the business in general which is influenced by volume.

23. Respondents' Distribution of Interest on Invested Capital

(a) The item of interest on invested capital was distributed as between modes of arrival, by both the Government and the respondents on the basis of the relative number of carlots.

24. Differences Between the Government's and the Respondents' Methods of Distributing Salaries and Expenses

(a) Throughout my explanations of methods employed in the distribution of the various classes of salaries and expenses, attention has been called to differences between the methods used by the Government and those used by the respondents. These differences, and their effect upon the costs, will now be explained. In connection with these explanations, the amount of the Government's costs and the respondents' costs for each class of salary or expense will be given as a means of indicating the importance of these differences. However, in order that salary appraisal adjustments, etc., made by respondents, will have no influence whatever in these comparisons, percentages will be used. And, whenever these percentages are applied to costs in order to indicate the extent of errors, the application will be made to the Government's cost figures, because those figures contain the errors.

25. Differences Between the Government's and the Respondents' Distribution of "Selling Salaries" and "Selling Expense"

(a) Selling salaries were distributed by the Government on the basis of "Head and Drafts" combined, and selling expenses (which were included by the Government in "yarding" expenses) were distributed by the Government on the basis of "Drafts" only. As previously explained, the respondents made an actual time-study of selling activities in the yards and used the results as a weight-factor in arriving at the basis of "Weighted Number of Head" which was used by the respondents in distributing both selling salaries

and selling expenses to modes of arrival. The factors and the percentages used by the Government and the respondents, respectively, are shown on schedule No. 22, and in order that the effect on Government costs caused by the use of these erroneous methods of distribution may be clearly indicated and measured, I will now compare the percentages used and show the amounts involved:

[fol. 1490] Selling Salaries

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $753,885—Respondents $973,960)				
Cattle & Calves—				
Straight Cars—Single Ownership..	46.33%	45.15		1.18%
Straight Cars—Plural Ownership..	17.78	16.11		1.67
Mixed Cars—Single Ownership...	3.37	3.75	.38%	
Mixed Cars—Plural Ownership...	6.62	7.12	.50	
Drive-Ins.....	15.72	18.63	2.91	
Seconds.....	10.18	9.24		.94
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $313,460—Respondents $357,982)				
Hogs—				
Straight Cars—Single Ownership..	33.00%	25.92%		7.08%
Straight Cars—Plural Ownership..	25.16	25.44	.25%	
Mixed Cars—Single Ownership...	4.94	4.86		.08
Mixed Cars—Plural Ownership...	10.50	12.21	1.71	
Drive-Ins.....	22.79	28.26	5.47	
Seconds.....	3.61	3.34		.27
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $76,741—Respondents $84,449)				
Sheep—				
Straight Cars—Single Ownership..	70.58%	55.59%		14.99%
Straight Cars—Plural Ownership..	13.63	16.32	2.69%	
Mixed Cars—Single Ownership...	1.98	2.79	.81	
Mixed Cars—Plural Ownership...	2.84	4.34	1.50	
Drive-Ins.....	9.13	18.00	8.87	
Seconds.....	1.84	2.96	1.12	
Total.....	100.00	100.00	.....	.....

Selling Expenses

(Total costs are—Government $17,760—Respondents $17,760)				
Cattle & Calves—				
Straight Cars—Single Ownership..	29.10%	45.15%	16.05%	
Straight Cars—Plural Ownership..	23.34	16.11		7.23%
Mixed Cars—Single Ownership...	3.14	3.75	.61	
Mixed Cars—Plural Ownership...	9.34	7.12		2.22
Drive-Ins.....	25.30	18.63		6.67
Seconds.....	9.78	9.24		.54
Total.....	100.00	100.00	.....	.....

(b) It will be noted that there are differences of from .08% to 14.99% and by the application of these percents to the Government's total costs for the respective species, it will be found that the differences between the actual distribution as used by respondents and the erroneous distribution used by the Government amount to from $96 to $22,038 affecting each of the modes of arrival, some of which are undercharged and others are overcharged.

[fol. 1491] 26. Differences Between the Government's and the Respondents' Distribution of "Yarding Salaries" and "Yarding Expenses"

(a) Both yarding salaries and yarding expenses were distributed by the Government on the basis of "drafts", whereas the respondents made an actual time-study of yarding activities and used the results as a weight-factor in arriving at the basis of "Weighted Number of Head" which was used by the respondents in distributing both yarding salaries and yarding expenses. The factors and the percentages used by the Government and by the respondents, respectively, are shown on schedule No. 22, and in order that the effect on Government costs caused by the use of an erroneous method of distribution may be clearly indicated, I will now compare the percentages used and show the amounts involved:

Yarding Salaries and Yarding Expenses

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $206,054—Respondents $208,109)				
Cattle & Calves—				
Straight Cars—Single Ownership	29.10%	47.41%	18.31%	
Straight Cars—Plural Ownership	23.34	16.76		6.58%
Mixed Cars—Single Ownership	3.14	3.48	.34	
Mixed Cars—Plural Ownership	9.34	6.18		3.16
Drive-Ins	25.30	20.39		4.91
Seconds	9.78	5.78		4.00
Total	100.00	100.00	.....	.....
(Total costs are—Government $125,061—Respondents $128,114)				

Yarding Salaries and Yarding Expenses—Continued

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
Hogs—				
Straight Cars—Single Ownership	17.91%	28.22%	10.31%	
Straight Cars—Plural Ownership	25.17	23.26		1.91%
Mixed Cars—Single Ownership	4.54	5.28	.74	
Mixed Cars—Plural Ownership	13.97	11.73		2.24
Drive-Ins	36.37	29.75		6.62
Seconds	2.04	1.76		.28
Total	100.00	100.00	.....	.....
(Total costs are—Government $20,192—Respondents $21,716)				
Sheep—				
Straight Cars—Single Ownership	32.55%	58.92%	26.37%	
Straight Cars—Plural Ownership	18.89	13.63		5.26%
Mixed Cars—Single Ownership	3.82	1.85		1.97
Mixed Cars—Plural Ownership	10.57	3.64		6.93
Drive-Ins	32.02	19.88		12.14
Seconds	2.15	2.08		.07
Total	100.00	100.00	.....	.....

(b) It will be noted that there are differences of from .07% to 26.37% and by the application of these percentages to the Government's total costs for the respective species, it will be seen that the differences between the actual distribution as used by respondents and the erroneous distribution used by the Government amount to from $14.92 to $37,821.50 and affect each of the modes of arrival, some of which are undercharged and others are overcharged.

[fol. 1492] 27. Differences Between the Government's and the Respondents' Distribution of "Office Salaries—Account Sales"

(a) These salaries were distributed by the Government on the basis of "Account Sales—Owners—Drafts" and by the respondents on the basis of "Drafts" only. The combination of three different factors, such as account sales, owners and drafts, is a mathematical fallacy and the product has no meaning whatsoever. Each of these factors carry different weight or influence and their combination therefore destroys whatever relationship they may have expressed individually as between modes of arrival. The result of such a misuse of figures cannot be relied upon even from the standpoint of constancy. On the other hand, the basis of "Drafts" alone as used by respondents is unadul-

terated and more than any other available basis measures the amount of work in relation to species and modes of arrival. A more complete explanation of this basis, especially in its application to "seconds" has been previously given. In order that the erroneous effect on Government's costs caused by the use of the basis "Account Sales—Owners—Drafts" may be indicated, the percentages used by the Government and the respondents will now be given in comparison:

Office Salaries—Account Sales

In the Case of	The Government Used	The Respondents Used	Resulting in Government Costs Being Understated	Resulting in Government Costs Being Overstated
(Total costs are—Government $92,760—Respondents $96,037)				
Cattle & Calves—				
Straight Cars—Single Ownership..	21.57%	29.10%	7.53%	
Straight Cars—Plural Ownership..	23.95	23.34		.61%
Mixed Cars—Single Ownership...	2.10	3.14	1.04	
Mixed Cars—Plural Ownership...	14.04	9.34		4.70
Drive-Ins.....	28.16	25.30		2.86
Seconds.....	10.18	9.78		.40
Total.....	100.00	100.00	.....	.....
(Totals costs are—Government $51,770—Respondents $51,657)				
Hogs—				
Straight Cars—Single Ownership..	12.46%	17.91%	5.45%	
Straight Cars—Plural Ownership..	29.64	25.17		4.47%
Mixed Cars—Single Ownership...	2.63	4.54	1.91	
Mixed Cars—Plural Ownership...	17.43	13.97		3.46
Drive-Ins.....	35.63	36.37	.74	
Seconds.....	2.21	2.04		.17
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $13,470—Respondents $12,703)				
Sheep—				
Straight Cars—Single Ownership..	26.97%	32.55%	5.58%	
Straight Cars—Plural Ownership..	20.04	18.89		1.15%
Mixed Cars—Single Ownership...	2.76	3.82	1.06	
Mixed Cars—Plural Ownership...	13.07	10.57		2.50
Drive-Ins.....	34.58	32.02		2.56
Seconds.....	2.58	2.15		.43
Total.....	100.00	100.00	.....	.....

[fol. 1493] (b) From this comparison, it will be seen that differences of from .17% to 7.53% exist, and that by the application of these percentages to the Government's total costs for the respective species, it will be noted that these differences amount to from $57.92 to $6,984.83 and affect each of the modes of arrival, some of which were overcharged and others were undercharged.

28. Differences Between the Government's and the Respondents' Distribution of "Office Salaries—Other"

(a) These expenses were distributed by the Government on the basis of "Account Sales—Owners—Drafts" and by the respondents on the basis of relative "carlots". The basis used by the Government has already been criticized in connection with "Office Salaries—Account Sales". Further comments are, therefore, unnecessary. However, the percentages used by the Government and by the respondents, respectively, will be shown in comparison in order that the extent to which the Government costs were affected by their erroneous distribution, may be clearly indicated.

Office Salaries—Other

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $110,688—Respondents $117,573)				
Cattle & Calves—				
Straight Cars—Single Ownership..	21.57%	53.94%	32.37%	
Straight Cars—Plural Ownership..	23.95	15.25		8.70%
Mixed Cars—Single Ownership...	2.10	2.37	.27	
Mixed Cars—Plural Ownership...	14.04	3.86		10.18
Drive-Ins	28.16	13.16		15.00
Seconds	10.18	11.42	1.24	
Total	100.00	100.00	.....	.....
(Total costs are—Government $61,834—Respondents $58,820)				
Hogs—				
Straight Cars—Single Ownership..	12.46%	33.09%	20.63%	
Straight Cars—Plural Ownership..	29.64	25.74		3.90%
Mixed Cars—Single Ownership...	2.63	4.64	2.01	
Mixed Cars—Plural Ownership...	17.43	10.02		7.41
Drive-Ins	35.63	22.72		12.91
Seconds	2.21	3.79	1.58	
Total	100.00	100.00	.....	.....
(Total costs are—Government $16,090—Respondents $14,908)				
Sheep—				
Straight Cars—Single Ownership..	26.97%	69.13%	42.16%	
Straight Cars—Plural Ownership..	20.04	14.10		5.94%
Mixed Cars—Single Ownership...	2.76	2.24		.52
Mixed Cars—Plural Ownership...	13.07	3.03		10.04
Drive-Ins	34.58	9.47		25.11
Seconds	2.58	2.03		.55
Total	100.00	100.00	.....	.....

(b) Here again, there are differences in the percentages used by the Government and the respondents of from .27% to 42.16% which, when applied to the total Government costs, indicate differences in amounts of from $83.67 to [fol. 1494] $35,829.70 which affect each of the modes of arrival, some of which have been undercharged and others have been overcharged.

29. Differences Between the Government's and the Respondents' Distribution of "Administration and General Salaries" and "Administration and General Expenses"

(a) Both of these classes of expenses were distributed by the Government on the basis of "Account Sales—Owners—Drafts", and by the respondents on the basis of relative "Carlots". The same criticism made of the Government's use of this basis in connection with other accounts, applies to these accounts also. My comments may be found under "Office Salaries—Account Sales". The different percentages resulting from the Government's use of this erroneous basis of distribution are here shown in order to indicate the effect upon Government costs.

Administration and General Salaries and Expenses

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $57,437—Respondents $72,170)				
Cattle & Calves—				
Straight Cars—Single Ownership..	21.57%	53.94%	32.37%	
Straight Cars—Plural Ownership..	23.95	15.25		8.70%
Mixed Cars—Single Ownership...	2.10	2.37	.27	
Mixed Cars—Plural Ownership...	14.04	3.86		10.18
Drive-Ins.....	28.16	13.16		15.00
Seconds.....	10.18	11.42	1.24	
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $31,067—Respondents $30,387)				
Hogs—				
Straight Cars—Single Ownership..	12.46%	33.09%	20.63%	
Straight Cars—Plural Ownership..	29.64	25.74		3.90%
Mixed Cars—Single Ownership...	2.63	4.64	2.01	
Mixed Cars—Plural Ownership...	17.43	10.02		7.41
Drive-Ins.....	35.63	22.72		12.91
Seconds.....	2.21	3.79	1.58	
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $12,468—Respondents $14,197)				

Administration and General Salaries and Expenses—Continued

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
Sheep—				
Straight Cars—Single Ownership..	26.97%	69.13%	42.16%	
Straight Cars—Plural Ownership..	20.04	14.10		5.94%
Mixed Cars—Single Ownership...	2.76	2.24		.52
Mixed Cars—Plural Ownership...	13.07	3.03		10.04
Drive-Ins.....	34.58	9.47		25.11
Seconds.....	2.58	2.03		.55
Total.....	100.00	100.00	.....	.....

(b) It will be seen that there are differences of from .27% to 42.16% which, when applied to the Government's costs for the respective species indicate that the use of this improper basis of distribution has caused errors of from $64.83 to $18,592.36 which have affected each mode of arrival, some of which have overcharged and others have been undercharged.

[fol. 1495] 30. Differences Between the Government's and the Respondents' Distribution of "Office Expenses"

(a) These expenses were distributed by the Government on the basis of "Account Sales—Owners—Drafts" and by the respondents on the basis of "Distributed Office Salaries". The respondents' exception to the basis used by the Government has been previously stated under "Office Salaries—Account Sales". And, as previously explained, the basis used by respondents follows universal practice in cost-accounting of distributing such expenses as these in accordance with the related salary distribution. The percentages used by the Government and the respondents, respectively are here given in comparison in order that the effect of the erroneous basis used by the Government may be indicated:

Office Expenses

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $113,870—Respondents $117,517)				
Cattle & Calves—				
Straight Cars—Single Ownership	21.57%	41.70%	20.13%	
Straight Cars—Plural Ownership	23.95	19.03		4.92%
Mixed Cars—Single Ownership	2.10	2.81	.71	
Mixed Cars—Plural Ownership	14.04	6.59		7.45
Drive-Ins	28.16	18.40		9.76
Seconds	10.18	11.47	1.29	
Total	100.00	100.00	.....	.....
(Total costs are—Government $63,998—Respondents $59,423)				
Hogs—				
Straight Cars—Single Ownership	12.46%	26.46%	14.00%	
Straight Cars—Plural Ownership	29.64	25.42		4.22%
Mixed Cars—Single Ownership	2.63	4.69	2.06	
Mixed Cars—Plural Ownership	17.43	12.18		5.25
Drive-Ins	35.63	28.42		7.21
Seconds	2.21	2.83	.62	
Total	100.00	100.00	.....	.....
(Total costs are—Government $16,252—Respondents $14,935)				
Sheep—				
Straight Cars—Single Ownership	26.97%	53.12%	26.15%	
Straight Cars—Plural Ownership	20.04	15.75		4.29%
Mixed Cars—Single Ownership	2.76	3.03	.27	
Mixed Cars—Plural Ownership	13.07	6.45		6.62
Drive-Ins	34.58	19.47		15.1[illegible]
Seconds	2.58	2.18		.40
Total	100.00	100.00	.....	.....

(b) In this instance, it will be noted that differences of from .27% to 26.15% exist between the Government's and the respondents' distributions, and the amounts of errors in Government costs caused thereby amount to from $43.88 to $22,922.03 and affect each mode of arrival, some of which have been undercharged and others have been overcharged.

[fol. 1496] 31. Differences Between the Government's and the Respondents' Distribution of Business Getting and Maintaining "Salaries" and "Expenses"

(a) Both business getting salaries and expenses were distributed by the Government on the basis of "Gross Commissions—less Seconds", and by the respondents on the basis of relative "carlots". It is obvious that the use of the

"commission" basis by the Government causes the expense to parallel the dollar-and-cents results, instead of volume, whereas the effort to get low-rate business may be greater than that required for high-rate business. Under the Government's method, the spread between costs and commissions would necessarily remain constant at all times for all classes of business and this results in an improper and misleading statement of practical conditions and costs. Business getting effort is aimed at volume and soliciting time is devoted accordingly, therefore, the respondents have used "carlots" as the proper basis for distributing these costs. The percentages used by the Government and the respondents, respectively, are shown here in order that the extent to which this error affects Government's costs may be indicated:

Business Getting and Maintaining Salaries and Expenses

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $305,270—Respondents $348,633)				
Cattle & Calves—				
Straight Cars—Single Ownership..	57.07%	60.90%	3.83%	
Straight Cars—Plural Ownership...	18.98	17.22		1.76%
Mixed Cars—Single Ownership...	2.86	2.67		.19
Mixed Cars—Plural Ownership...	5.21	4.35		.86
Drive-Ins	15.88	14.86		1.02
Seconds	.....	.....	.....	.....
Total	100.00	100.00	.....	.....
(Total costs are—Government $155,477—Respondents $146,076)				
Hogs—				
Straight Cars—Single Ownership..	29.54%	34.38%	4.84%	
Straight Cars—Plural Ownership..	26.30	26.75	.45	
Mixed Cars—Single Ownership...	4.93	4.83		.10%
Mixed Cars—Plural Ownership...	11.73	10.41		1.32
Drive-Ins	27.50	26.63		3.87
Seconds	.....	.....	.....	.....
Total	100.00	100.00	.....	.....
(Total costs are—Government $42,114—Respondents $50,226)				
Sheep—				
Straight Cars—Single Ownership..	62.13%	70.57%	8.44%	
Straight Cars—Plural Ownership..	13.83	14.39	.56	
Mixed Cars—Single Ownership...	3.26	2.28		.98%
Mixed Cars—Plural Ownership...	5.45	3.09		2.36
Drive-Ins	15.33	9.67		5.66
Seconds	.....	.....	.....	.....
Total	100.00	100.00	.....	.....

(b) These comparisons show that there are differences of from .10% to 8.44% representing errors in Government costs with respect to each of the modes of arrival amounting to from $155.48 to $11,691.84, some of which are overcharges and others are undercharges.

[fol. 1497] 32. Differences Between the Government's and the Respondents' Distribution of "Risk Expenses"

(a) This class of expense was distributed by the Government to species on the basis of "Head times Value" and as between modes of arrival on the basis of "Head". The respondents distributed these expenses both to species and as between modes of arrival on the basis of relative carlots. As shown on Government Exhibit No. 49 at pages 91 to 93, risk expenses include:

In the Case of	Risk Expenses: The Government Used	Risk Expenses: The Respondents Used	Resulting in Government's Costs Being: Understated	Resulting in Government's Costs Being: Overstated
(Total costs are—Government $31,109—Respondents $31,496)				
Cattle & Calves—				
Straight Cars—Single Ownership	50.49%	53.94%	3.45%	
Straight Cars—Plural Ownership	16.43	15.25		1.18%
Mixed Cars—Single Ownership	3.42	2.37		1.05
Mixed Cars—Plural Ownership	5.98	3.86		2.12
Drive-Ins	13.40	13.16		.24
Seconds	10.28	11.42	1.14	
Total	100.00	100.00	.....	.....

(b) The only item of expense on this list paid for on the basis of the value of livestock is that of $14,940.28 for bond premiums and this item represents less than 30% of the total risk expenses. Therefore, it was largely improper for the Government to use that factor as a basis for distributing all risk expenses as between species. On the other hand, none of these expenses is paid for on the basis of "Head", which is the basis used by the Government in distributing all risk expenses as between modes of arrival under each species. It is agreed that "volume" is the proper basis to be employed for both these distributions, but the relative number of "carlots" more nearly expresses the relation-

ship both to species and to modes of arrival of expenses having general application to the business as a whole.

(c) The percentages used by the Government and the respondents, respectively, are given here in comparison for the purpose of indicating the effect upon Government costs caused by the use of these improper methods of distribution:

[fol. 1498]

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $15,603—Respondents $16,644)				
Hogs—				
Straight Cars—Single Ownership..	34.22%	33.09%		1.13%
Straight Cars—Plural Ownership..	25.16	25.74	.58%	
Mixed Cars—Single Ownership...	4.97	4.64		.33
Mixed Cars—Plural Ownership...	10.22	10.02		.20
Drive-Ins.....	21.69	22.72	1.03	
Seconds.....	3.74	3.79	.05	
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $3,899—Respondents $3,902)				
Sheep—				
Straight Cars—Single Ownership..	71.77%	69.13%		2.64%
Straight Cars—Plural Ownership..	13.46	14.10	.64%	
Mixed Cars—Single Ownership...	1.93	2.24	.31	
Mixed Cars—Plural Ownership...	2.60	3.03	.43	
Drive-Ins.....	8.41	9.47	1.06	
Seconds.....	1.83	2.03	.20	
Total.....	100.00	100.00	.....	.....

(d) From these comparisons, it will be noted that differences of from .05% to 3.45% exist between the Government's and the respondents' distributions. These differences amount to from $7.80 to $1,073.25 and they affect each of the modes of arrival, some of which are overcharged and others are undercharged.

33. Differences Between the Government's and the Respondents' Distribution as Between "Species"

(a) In addition to the above differences between the Government's and the respondents' distributions as between modes of arrival under each species, similar differences exist in the distribution as between species in the case of

all "indirect" salaries and expenses. The differences in the distribution as between species caused by the Government's use of erroneous bases, amount to from .07% to 18.28%, some of which resulted in overcharges and others in undercharges. These errors affect each and every account herein mentioned, as well as each and every species under those accounts.

34. Government Error in Calculating the Number of Equivalent Carlots

(a) Inasmuch as rail-line business is handled on a carlot basis, while "drive-ins" and "seconds" are handled on a per-head basis, it becomes necessary to convert the number of head of drive-ins and seconds to a "carlot" basis in order to provide a common denominator for the distribution of costs as between these and other modes of arrival, and in order to have uniformity in unit-cost statements. This conversion has heretofore been accomplished by the Government by taking the average number of head-per-car based on rail-line experience for each firm and dividing it into the number of head of "drive-ins" and "seconds". However, [fol. 1499] in the Chicago case, an error was made and, in the case of both hogs and sheep, the average number of head-per-decklot was used in making the conversion, instead of head-per-car. This error had the following effect:

	The Number of Cars of			
	Drive-Ins		Seconds	
	Hogs	Sheep	Hogs	Sheep
Based on Average Number of Head Per Decklot	12,373	1,652	2,121	363
Based on Average Number of Head Per Carlot	9,856	999	1,648	221
Difference	2,517	653	433	142
Percent of Difference	26%	65%	26%	65%

(b) This error was first noted by respondents when the advance copy of Government Exhibits was turned over to them. The Government's attention was immediately called to the error and revised pencil figures, showing the average number of head-per-car based upon carlot instead of decklot rail-line experience were supplied to respondents in order that the number of equivalent carlots for "drive-ins" and "seconds" as shown on Government Exhibit 49, pages

211 to 213 and 220 to 222 could be corrected before used for cost-accounting purposes. It was assumed by respondents that the Government would make corresponding corrections on its copy, but this was not done.

(c) The results of this error in Government costs are that wherever costs have been distributed to species or to modes of arrival on the basis of these so-called "carlots", the proportions charged against hogs and sheep, and to "drive-ins" and "seconds" thereunder, have been overstated, and the charges to other species (cattle and calves) and to all modes of arrival have been understated.

(d) Greater importance, however, attaches to the fact that on the cost statements for hogs and for sheep included in Government's Exhibit 49, pages 382 to 550, the volume and the unit costs which are identified as "cars" and "Cost-per-car" are, in the case of "drive-ins" and "seconds" really "equivalent-decklots" and "cost-per-equivalent-decklot" instead, with the result that these unit-costs have been understated on the average 26% and 65% as indicated above. This condition will be clearly recognized when it is noted from these cost-statements that, in the case of "drive-ins" and "seconds", the number of cars and decklots are invariably the same in spite of the heavy percentage of double-deck cars indicated.

(e) Now, I would like to say here that the accountant for respondents in this case has, in cases for other markets, based final unit-costs for hogs and for sheep on "single-deck carlots" which is another name for "decklots", but this has no relation whatever to the erroneous calculation of "equivalent carlots" by the Government in this case. The respondents' accountant has not, in any case, calculated the equivalent carlots for "drive-ins" and "seconds" on the basis of "decklot" experience. Furthermore, wherever he has used the term "cars" the figures represented cars throughout, but under this heading the Government's figures are partly cars and partly decklots, and in arriving at the total, these two different units are added together, although identified as "cars" only.

(f) The respondents' accountant in the Chicago case, however, has used the properly calculated "carlot" basis, not only in his distributions, but also in his unit-cost deter-

minations, although in the latter connection he used the "single-deck carlot" basis at other markets. The change in unit-cost determinations was made as a result of studies made at the Chicago market indicating that the single-deck basis so greatly disturbs the unit-costs for hogs and for sheep that uniformity and comparison is completely de- [fol. 1500] stroyed between these species and with cattle and calves, as well as between modes of arrival under these species.

(g) Because the Government has used the "deckiot" basis (which it identifies as "cars") in calculating unit costs, such costs for both hogs and sheep have been very considerably understated in comparison with respondents' costs which are based on "carlots".

35. Government's Error in the Inclusion of "Split" and "Country" Sales in the Same Classification With "Seconds" or "Speculator"

(a) On the Government's unit-cost statements, Exhibit No. 49, pages 287 to 550, the "Split" and "Country" volume and expenses, and the "Split" commissions, have been combined with "Seconds." The "Country" commissions have been eliminated. The merging of these three different classes of business is erroneous and completely destroys the value of unit-costs for "seconds" in the case of all firms handling either split or country sales, and disturbs the costs of all other classes of business handled by those firms.

(b) "Split" sales are those handled on the basis of part-commissions and may affect any class of business, except "seconds" (the class in which they were included). Any mode of arrival may involve a "split" and the amount of commission charged depends upon the mode of arrival, therefore, the "splits" should not be separately classified but should be included with the mode of arrival from which they arise. However, the "splits" have not been identified in the Government's analysis by modes of arrival and the respondents, therefore, found it necessary to prorate them over the modes of arrival (other than "seconds") on the basis of relative volume. This was done both as to volume and commissions.

(c) "Country" sales are those transacted off the market and which are not subject to rate regulation. For that reason, they were eliminated by respondents completely as to volume, cost, and commissions. However, the Government only eliminated the commissions—the volume and costs having been included under the "seconds" as previously explained.

36. Government's Erroneous Theory of Unit Cost-Per-Car

(a) On all Government costs statements, Exhibit No. 49 pages 287 to 550, an item has been shown immediately under "Income-Gross-Per-Car", identified as "Cost-Per-Car". This item does not represent the actual cost-per-car, but the theoretical cost-per-car, and these costs were calculated by taking the unit-cost for all modes of arrival and distributing the amount to each mode of arrival according to relative unit-commissions. Presumably these theoretical costs were set up to indicate what the unit-cost for each mode of arrival would be if costs were controlled according to the relative amount of commissions produced by each mode of arrival.

(b) It is obvious that whatever purpose the theory might serve, the application of it has been reversed by the Government. The theory should have been applied to commissions, which are subject to regulation and control, but not to costs. If the theory had been correctly applied, the results would have indicated the extent of adjustments in commission rates required to equalize the profit or loss on each mode of arrival. The respondents, however, see no value in such a theory because the primary cost influence is the "size of the draft" and not "mode of arrival."

[fol. 1501] 37. Comparison of Government's Costs and Respondents' Costs

(a) In view of the omission on the part of the Government of essential elements of cost, such as owners' salaries, etc., which amount to $376,263.55 (or about 12% of the total cost) and the many errors of large amounts which have been pointed to in the Government's distribution of salaries and expenses to each and all the species and to each and all the modes of arrival thereunder, as well as the Government's basic error in arriving at the number of

so-called equivalent "Cars" and its effect upon all the costs, and the Government's confusion as to the proper classification of business on its cost statements, and the Government's use of "Decklots" in some cases and "Carlots" in other cases for figuring the unit-costs, it is utterly impossible to draw any proper comparisons between the Government's costs as they are stated, and the respondents' costs. However, such a comparison is highly important in order that the net results of all the errors made by the Government may be allocated to species and to modes of arrival and placed against the corrected results as indicated by the respondents' costs.

(b) The Government's Exhibit No. 49 pages 287 to 550 provides a separate cost statement for each of the respondents, except in a number of cases where the volume of business handled is extremely small. The Government did not provide a composite cost statement for all the respondents, therefore, in order to make necessary comparisons between the Government's costs and the respondents' costs, the individual cost statements have been summarized and the missing parts have been supplied. In this summarization, no change whatever has been made in the Government's distributions as heretofore criticized—the amounts as distributed by the Government for individual firms having simply been added together in arriving at the composite aggregate costs. However, in order that the unit-costs might be compared, I have based the same on the number of "Carlots" as properly calculated in arriving at the Government's cost-per-car.

(c) The respondents have also prepared a separate cost statement for each of their firms, and these may be found on sheets Nos. 1 to 101 of schedule No. 4. The respondents have also prepared a composite cost statement for all their firms which may be found on sheet 102 of schedule No. 4. All of the respondents' costs statements have been based on corrected methods of computation and distribution, as already explained.

(d) In order that the extent of respondents' corrections in the Government's cost statements may be more definitely measured and fully appreciated, and in order that their effect on unit-costs, and possible improper and unfair in-

fluence on commission rate considerations, may be clearly set forth, the Government's costs figures and the respondents' costs figures will now be given in comparison.

(e) Attention is directed to the fact that this comparison considers each classification of accounts separately and shows the differences between the Government's and the Respondents' figures in red when the Government's costs are lower than the respondents, and in black when the Government's costs are higher than the respondents. It also compares the aggregate costs, and the cost-per-car. In these comparisons, the consolidated results of Government errors and their effect on each account, species, and mode of arrival, as previously criticized, may be considered in condensed form.

(Here follows 1 photolithograph, side folio 1502)

BEFORE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 402

NOTE:
Differences in RED indicate Government under Respondents
Differences in BLACK indicate Government over Respondents

COMPARISON OF GOVERNMENT'S COSTS AND RESPONDENTS' COSTS

ELEMENT OF COST	CATTLE AND CALVES								HOGS						
	SELLING SERVICE							BUYING SERVICE	SELLING SERVICE						
	STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE-INS	SECONDS	TOTAL		STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE-INS	SECONDS	TO
SELLING & BUYING SALARIES – GOVERNMENT	$ 340 043	$136 099	$23 496	$ 49 705	$127 590	$ 76 952	$753 885	$17 746	$ 99 689	$79 683	$ 15 092	$31 988	$73 999	$ 13 009	$313
SELLING & BUYING SALARIES – RESPONDENTS	428 014	161 557	32 813	67 392	194 306	89 878	973 960	23 202	92 845	92 462	17 679	41 296	101 547	12 153	357
DIFFERENCE	87 971	25 458	9 317	17 687	66 716	12 926	220 075	5 456	6 844	12 779	2 587	9 308	27 548	856	44
COUNTRY SELLING & BUYING – CR. – GOVERNMENT	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
COUNTRY SELLING & BUYING – CR. – RESP'T.	1 076	304	36	66	298	195	1 975	–	–	–	–	–	–	–	
DIFFERENCE	1 076	304	36	66	298	195	1 975	–	–	–	–	–	–	–	
SELLING EXPENSE – YARD – GOVERNMENT	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
SELLING EXPENSE – YARD – RESPONDENTS	8 531	3 044	568	903	3 298	1 416	17 760	–	–	–	–	–	–	–	
DIFFERENCE	8 531	3 044	568	903	3 298	1 416	17 760	–	–	–	–	–	–	–	
YARDING SALARIES – GOVERNMENT	63 781	47 268	6 407	17 572	47 938	20 395	203 376	4 779	23 645	30 938	5 859	17 300	42 226	3 748	123
YARDING SALARIES – RESPONDENTS	96 689	34 618	6 971	12 773	41 875	12 079	205 005	4 790	35 849	29 867	6 901	15 448	36 415	2 189	126
DIFFERENCE	32 908	12 670	564	4 799	6 058	8 316		11	12 204	1 071	1 042	1 852	5 811	1 559	2
YARDING EXPENSE – GOVERNMENT	6 734	5 074	620	1 517	4 604	1 889	20 438	400	265	343	55	190	458	34	1
YARDING EXPENSE – RESPONDENTS	1 603	504	141	201	491	164	3 104	–	439	327	65	173	419	22	1
DIFFERENCE	5 131	4 570	479	1 316	4 113	1 725	17 334	400	174	16	10	17	39	12	
OFFICE SALARIES – ACCT. SALES – GOVERNMENT	–	–	–	–	–	–	92 670	–	–	–	–	–	–	–	51
OFFICE SALARIES – ACCT. PROHS – GOVERNMENT	–	–	–	–	–	–	–	1 468	–	–	–	–	–	–	
OFFICE SALARIES – OTHER – GOVERNMENT	–	–	–	–	–	–	110 688	1 738	–	–	–	–	–	–	61
ADM & GENERAL SALARIES – GOVERNMENT	–	–	–	–	–	–	11 830	187	–	–	–	–	–	–	6
TOTAL – GOVERNMENT	50 718	50 835	4 615	28 213	56 740	24 067	215 188	3 413	16 283	34 675	3 386	20 318	42 159	3 393	120
OFFICE SALARIES – ACCT. SALES – RESPONDENTS	27 152	22 686	3 036	9 331	23 669	10 163	96 037	–	9 464	13 367	2 309	7 410	17 949	1 158	51
OFFICE SALARIES – ACCT. PROHS – RESPONDENTS	–	–	–	–	–	–	–	2 457	–	–	–	–	–	–	
OFFICE SALARIES – OTHER RESPONDENTS	61 919	17 974	2 960	4 739	15 639	14 342	117 573	3 252	19 770	14 711	2 870	5 051	13 450	1 968	58
ADM & GENERAL SALARIES – RESPONDENTS	16 429	3 202	465	743	3 061	2 737	26 637	551	3 017	2 195	315	846	1 967	353	8
TOTAL – RESPONDENTS	105 500	43 862	6 461	14 813	42 369	27 242	240 247	6 260	32 251	30 273	5 494	14 307	33 366	3 479	115
DIFFERENCE	54 782	6 973	1 846	13 400	14 371	3 175	25 059	2 847	15 968	4 402	2 108	6 011	8 793	86	1
OFFICE EXPENSE – GOVERNMENT	27 670	27 547	2 413	14 050	29 591	12 599	113 870	1 822	8 967	18 550	1 804	10 254	22 882	1 541	63
OFFICE EXPENSE – RESPONDENTS	50 738	22 643	3 115	7 228	20 984	12 809	117 517	3 064	15 885	15 036	2 764	6 915	17 092	1 731	59
DIFFERENCE	23 068	4 904	702	6 822	8 607	210	3 647	1 242	6 918	3 514	960	3 339	5 790	190	4
ADM & GENERAL EXPENSE – GOVERNMENT	11 367	10 433	939	5 499	10 852	4 497	43 607	746	3 334	6 682	708	3 896	8 274	563	23
ADM & GENERAL EXPENSE – RESPONDENTS	25 675	6 729	1 070	1 718	5 547	4 794	45 593	1 384	7 257	5 476	1 089	2 237	4 792	843	21
DIFFERENCE	14 288	3 704	131	3 781	5 305	297	1 926	638	3 923	1 206	381	1 659	3 482	280	1
BUSINESS GETTING SALARIES – GOVERNMENT	75 513	27 803	4 272	8 602	22 729	–	138 919	2 987	19 840	20 105	3 426	8 982	17 577	–	69
BUSINESS GETTING SALARIES– ELE A – RESPT.	47 224	15 302	2 408	4 344	12 299	–	81 577	–	15 782	13 279	2 202	5 095	10 059	–	46
BUSINESS GETTING SALARIES– ELE B – RESPT.	51 992	16 658	2 549	4 653	15 286	–	91 138	–	12 871	11 406	1 987	4 342	8 358	–	38
TOTAL – RESPONDENTS	99 216	31 960	4 957	8 997	27 585	–	172 715	–	28 653	24 685	4 189	9 437	18 417	–	85
DIFFERENCE	23 703	4 157	685	395	4 856	–	33 796	2 987	8 813	4 580	763	455	840	–	17
BUSINESS GETTING EXPENSE – GOVERNMENT	95 868	32 707	4 848	8 598	24 330	–	166 351	3 225	26 178	22 691	4 292	10 376	22 010	–	85
BUSINESS GETTING EXPENSE– ELE A – RESPT.	68 610	18 678	2 699	4 178	14 620	–	108 785	–	18 345	13 226	2 403	5 082	11 815	–	50
BUSINESS GETTING EXPENSE– ELE B – RESPT.	37 813	13 199	2 160	3 815	10 146	–	67 133	–	10 024	8 638	1 512	3 595	6 055	–	29
	106 423	31 877	4 859	7 993	24 766	–	175 918	–	28 369	21 864	3 915	8 677	17 870	–	80

COUNTRY SELLING & BUYING – CR. – RESP'T.	1 076	304	36	66	298	195	1 975	–	–	–	–	–	–	–	–	–
DIFFERENCE	1 076	304	36	66	298	195	1 975	–	–	–	–	–	–	–	–	–
SELLING EXPENSE – YARD – GOVERNMENT	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
SELLING EXPENSE – YARD – RESPONDENTS	8 531	3 044	568	903	3 298	1 416	17 760	–	–	–	–	–	–	–	–	–
DIFFERENCE	8 531	3 044	568	903	3 298	1 416	17 760	–	–	–	–	–	–	–	–	–
YARDING SALARIES – GOVERNMENT	63 781	47 268	6 407	17 572	47 933	20 395	203 376	4 779	23 645	30 938	5 859	17 300	42 226	3 748	123 71	
YARDING SALARIES – RESPONDENTS	96 689	34 618	6 971	12 773	41 875	12 079	205 005	4 790	35 849	29 867	6 901	15 448	36 415	2 189	126	
DIFFERENCE	32 908	12 670	564	4 799	6 058	8 316		11	12 204	1 071	1 042	1 852	5 811	1 559	2	
YARDING EXPENSE – GOVERNMENT	6 734	5 074	620	1 517	4 604	1 889	20 438	400	265	343	55	190	458	34	1	
YARDING EXPENSE – RESPONDENTS	1 603	504	141	201	491	164	3 104	–	439	327	65	173	419	22	1	
DIFFERENCE	5 131	4 570	479	1 316	4 113	1 725	17 334	400	174	16	10	17	39	12		
OFFICE SALARIES – ACCT. SALES – GOVERNMENT	–	–	–	–	–	–	92 670	–	–	–	–	–	–	–	51	
OFFICE SALARIES – ACCT. PRCHS – GOVERNMENT	–	–	–	–	–	–	–	1 468	–	–	–	–	–	–	–	
OFFICE SALARIES – OTHER – GOVERNMENT	–	–	–	–	–	–	110 688	1 738	–	–	–	–	–	–	61	
ADM & GENERAL SALARIES – GOVERNMENT	–	–	–	–	–	–	11 830	187	–	–	–	–	–	–	6	
TOTAL – GOVERNMENT	50 718	50 835	4 615	28 213	56 740	24 067	215 188	3 413	16 283	34 675	3 386	20 318	42 159	3 393	120	
OFFICE SALARIES – ACCT. SALES – RESPONDENTS	27 152	22 686	3 036	9 331	23 669	10 163	96 037	–	9 464	13 367	2 309	7 410	17 949	1 158	51	
OFFICE SALARIES – ACCT. PRCHS – RESPONDENTS	–	–	–	–	–	–	–	2 457	–	–	–	–	–	–	–	
OFFICE SALARIES – OTHER RESPONDENTS	61 919	17 974	2 960	4 739	15 639	14 342	117 573	3 252	19 770	14 711	2 870	051	13 450	1 968	58	
ADM & GENERAL SALARIES – RESPONDENTS	16 429	3 202	465	743	3 061	2 737	26 637	551	3 017	2 195	315	846	1 967	353	8	
TOTAL – RESPONDENTS	105 500	43 862	6 461	14 813	42 369	27 242	240 247	6 260	32 251	30 273	5 494	14 307	33 366	3 479	119	
DIFFERENCE	54 782	6 973	1 846	13 400	14 371	3 175	25 059	2 847	15 968	4 402	2 108	6 011	8 793	86	1	
OFFICE EXPENSE – GOVERNMENT	27 670	27 547	2 413	14 050	29 591	12 599	113 870	1 822	8 967	18 550	1 804	10 254	22 882	1 541	63	
OFFICE EXPENSE – RESPONDENTS	50 738	22 643	3 115	7 228	20 984	12 809	117 517	3 064	15 885	15 036	2 764	6 915	17 092	1 731	59	
DIFFERENCE	23 068	4 904	702	6 822	8 607	210	3 647	1 242	6 918	3 514	960	3 339	5 790	190	4	
ADM & GENERAL EXPENSE – GOVERNMENT	11 367	10 433	939	5 499	10 852	4 497	43 607	746	3 334	6 682	708	3 896	8 274	563	23	
ADM & GENERAL EXPENSE – RESPONDENTS	25 675	6 729	1 070	1 718	5 547	4 794	45 593	1 384	7 257	5 476	1 089	2 237	4 792	843	21	
DIFFERENCE	14 288	3 704	131	3 781	5 305	297	1 926	638	3 923	1 206	381	1 659	3 482	280	1	
BUSINESS GETTING SALARIES – GOVERNMENT	75 513	27 803	4 272	8 602	22 729	–	138 919	2 987	19 840	20 105	3 426	8 982	17 577	–	69	
BUSINESS GETTING SALARIES– ELE A – RESPT.	47 224	15 302	2 408	4 344	12 299	–	81 577	–	15 782	13 279	2 202	5 095	10 059	–	46	
BUSINESS GETTING SALARIES– ELE B – RESPT.	51 992	16 658	2 549	4 653	15 286	–	91 138	–	12 871	11 406	1 987	4 342	8 358	–	38	
TOTAL – RESPONDENTS	99 216	31 960	4 957	8 997	27 585	–	172 715	–	28 653	24 685	4 189	9 437	18 417	–	85	
DIFFERENCE	23 703	4 157	685	395	4 856	–	33 796	2 987	8 813	4 580	763	455	840	–	15	
BUSINESS GETTING EXPENSE – GOVERNMENT	95 868	32 707	4 848	8 598	24 330	–	166 351	3 225	26 178	22 691	4 292	10 376	22 010	–	85	
BUSINESS GETTING EXPENSE– ELE A – RESPT.	68 610	18 678	2 699	4 178	14 620	–	108 785	–	18 345	13 226	2 403	5 082	11 815	–	50	
BUSINESS GETTING EXPENSE– ELE B – RESPT.	37 813	13 199	2 160	3 815	10 146	–	67 133	–	10 024	8 638	1 512	3 595	6 055	–	29	
TOTAL – RESPONDENTS	106 423	31 877	4 859	7 993	24 766	–	175 918	–	28 369	21 864	3 915	8 677	17 870	–	80	
DIFFERENCE	10 555	830	11	605	436	–	9 567	3 225	2 191	827	377	1 699	4 140	–	4	
RISK EXPENSE – GOVERNMENT	15 544	5 059	1 066	1 806	4 524	3 110	31 109	1 160	4 929	3 752	795	1 533	3 677	617	15	
RISK EXPENSE – RESPONDENTS	16 658	4 830	787	1 250	4 554	3 417	31 496	–	5 342	4 138	812	1 679	4 064	609	16	
DIFFERENCE	1 114	229	279	556	30	307	387	1 160	413	386	17	146	387	8	1	
RETURN ON INVESTED CAPITAL – GOVERNMENT	13 786	4 211	637	1 071	3 651	3 084	26 440	766	4 636	3 698	643	1 419	4 116	715	15	
RETURN ON INVESTED CAPITAL – RESPONDENTS	17 537	5 374	808	1 371	4 715	3 691	33 496	948	6 073	4 803	815	1 859	4 310	626	18	
DIFFERENCE	3 751	1 163	171	300	1 064	607	7 056	182	1 437	1 105	172	440	194	89	3	
AGGREGATE COST OF SERVICE – GOVERNMENT	701 044	347 056	49 313	136 633	332 544	146 593	1 713 183	37 044	207 766	221 117	36 060	106 256	237 378	23 620	832	
AGGREGATE COST OF SERVICE – RESPONDENTS	955 508	346 694	62 514	124 573	370 192	155 295	2 014 776	39 648	252 963	228 931	43 723	102 028	238 292	21 652	887	
DIFFERENCE	254 464	362	201	12 060	37 648	8 702	301 593	2 604	45 197	7 814	7 663	4 228	914	1 968	55	
NUMBER OF CARS	46 016	13 008	2 018	3 289	11 227	9 747	85 305	2 484	14 400	11 203	2 020	4 360	9 890	1 648	40	
COST PER CAR – GOVERNMENT	$ 15.23	$ 26.68	$ 24.44	$ 41.54	$ 29.62	$ 15.04	$ 20.08	$ 14.91	$ 14.43	$ 19.74	$ 17.85	$ 24.37	$ 24.00	$ 14.33	$ 1	
COST PER CAR – RESPONDENTS	20.76	26.65	30.98	37.88	32.97	15.93	23.62	15.96	17.57	20.43	21.65	23.40	24.09	13.15	2	
DIFFERENCE	5.53	.03	6.54	3.66	3.35	.89	3.54	1.05	3.14	.69	3.80	.97	.09	1.18		

...RE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
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...F GOVERNMENT'S COSTS AND RESPONDENTS' COSTS

Sheet 16.

HOGS									SHEEP								
BUYING SERVICE	SELLING SERVICE							BUYING SERVICE	SELLING SERVICE							BUYING SERVICE	TOTAL ALL SPECIES
	STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE-INS	SECONDS	TOTAL		STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE-INS	SECONDS	TOTAL		
97 746	$ 99 689	$79 683	$ 15 092	$31 988	$73 999	$ 13 009	$313 460	$4 112	$ 45 404	$ 9 857	$ 2 260	$3 327	$ 6 824	$ 5 069	$ 76 741	$5 250	$1 171 194
23 202	92 845	92 462	17 679	41 296	101 547	12 153	357 982	5 600	48 908	12 802	2 780	4 224	17 429	2 306	84 449	5 324	1 450 517
5 456	6 844	12 779	2 587	9 308	27 548	856	44 322	1 488	1 496	2 945	520	897	7 605	2 763	7 706	74	279 323
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
–	–	–	–	–	–	–	–	–	243	44	–	–	12	2	301	–	2 276
–	–	–	–	–	–	–	–	–	243	44	–	–	12	2	301	–	2 276
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	17 760
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	17 760
4 779	23 645	30 938	5 859	17 300	42 226	3 748	123 716	596	7 350	4 110	680	1 485	4 770	2 344	20 689	643	353 799
4 790	35 849	29 867	6 901	15 448	36 415	2 189	126 669	501	12 698	2 926	443	848	4 060	354	21 329	803	359 097
11	12 204	1 071	1 042	1 852	5 811	1 559	2 953	85	5 348	1 184	187	637	710	1 980	640	160	5 298
400	265	343	55	190	458	34	1 345	5	201	188	12	37	93	36	503	5	22 696
–	439	327	65	173	419	22	1 445	–	275	50	8	6	44	9	387	–	4 936
400	174	16	10	17	39	12	100	5	74	74	9	31	49	27	116	5	17 760
–	–	–	–	–	–	–	51 770	–	–	–	–	–	–	–	13 470	–	157 910
1 468	–	–	–	–	–	–	–	199	–	–	–	–	–	–	–	373	2 040
1 738	–	–	–	–	–	–	61 834	239	–	–	–	–	–	–	16 090	431	191 040
187	–	–	–	–	–	–	6 610	29	–	–	–	–	–	–	1 719	46	20 421
3 413	16 283	34 675	3 386	20 318	42 159	3 393	120 214	467	8 446	5 911	790	3 169	8 674	4 329	31 279	850	371 411
–	9 464	13 367	2 309	7 410	17 949	1 158	51 657	–	4 190	2 325	475	1 390	4 047	316	12 703	–	160 397
2 457	–	–	–	–	–	–	–	335	–	–	–	–	–	–	–	1 315	4 107
3 252	19 770	14 711	2 870	10 051	13 450	1 968	58 820	647	10 477	2 023	360	432	1 328	288	14 908	684	195 884
551	3 017	2 195	315	846	1 967	353	8 693	54	3 603	644	47	64	280	48	4 686	200	40 821
6 260	32 251	30 273	5 494	14 307	33 366	3 479	119 170	1 036	18 270	4 992	882	1 846	5 685	652	32 297	2 199	401 209
2 847	15 968	4 402	2 108	6 011	8 793	86	1 044	569	9 824	919	132	1 323	3 019	3 677	1 018	1 349	29 798
1 822	8 967	18 550	1 804	10 254	22 882	1 541	63 998	270	4 424	3 134	397	1 679	4 762	1 856	16 252	457	196 669
3 064	15 885	15 036	2 764	6 915	17 092	1 731	59 423	578	7 730	2 343	438	975	3 080	389	14 985	1 159	196 669
1 242	6 918	3 514	960	3 339	5 790	190	4 575	308	3 306	791	41	704	1 682	1 487	1 317	695	–
746	3 334	6 682	708	3 896	8 274	563	23 457	91	3 954	2 182	173	700	2 200	1 540	10 749	688	79 338
1 384	7 257	5 476	1 089	2 237	4 792	843	21 694	229	7 047	1 327	149	182	664	142	9 511	987	79 338
638	3 923	1 206	381	1 659	3 482	280	1 763	138	3 093	855	24	518	1 536	1 398	1 238	99	–
2 987	19 640	20 105	3 426	8 982	17 577	–	69 930	364	8 319	2 101	559	1 035	2 352	–	14 366	681	227 247
–	15 782	13 279	2 202	5 095	10 059	–	46 417	–	6 002	1 415	379	460	1 240	–	9 496	–	137 490
–	12 871	11 406	1 987	4 342	8 358	–	38 964	–	6 407	1 704	292	486	1 055	–	9 944	–	140 046
–	28 653	24 685	4 189	9 437	18 417	–	85 381	–	12 409	3 119	671	946	2 295	–	19 440	–	277 536
2 987	8 813	4 580	763	455	840	–	15 451	364	4 090	1 018	112	89	57	–	5 074	681	30 269
3 225	26 178	22 691	4 292	10 376	22 010	–	85 547	385	18 249	3 830	818	1 300	3 551	–	27 748	1 421	284 677
–	18 345	13 226	2 403	5 082	11 815	–	50 871	–	12 330	2 365	326	414	1 402	–	16 837	–	176 493
–	10 024	8 638	1 512	3 595	6 055	–	29 824	–	10 480	1 896	241	423	909	–	13 949	–	110 906
–	28 369	21 864	3 915	8 677	17 870	–	80 695	–	22 810	4 261	567	837	2 311	–	30 786	–	287 399
3 225	2 191	827	377	1 699	4 140	–	4 852	385	4 561	431	251	463	1 240	–	3 038	1 421	2 722
1 160	4 929	3 752	795	1 533	3 677	617	15 303	289	2 579	502	82	118	388	230	3 899	282	52 042
–	5 342	4 138	812	1 679	4 064	609	16 644	–	2 646	540	77	119	425	95	3 902	–	52 042
160	413	286	17	146	387	8	1 341	289	67	38	5	1	37	135	3	282	–

–	–	–	–	–	–	–	–	–	243	44	–	–	12	2	301	–	2 276
–	–	–	–	–	–	–	–	–	243	44	–	–	12	2	301	–	2 276
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	17 760
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	17 760
4 779	23 645	30 938	5 859	17 300	42 226	3 748	123 716	596	7 350	4 110	680	1 485	4 770	2 344	20 689	643	353 799
4 790	35 849	29 867	6 901	15 448	36 415	2 189	126 669	501	12 698	2 926	443	848	4 060	354	21 329	803	359 097
11	12 204	1 071	1 042	1 852	5 811	1 559	2 953	85	5 348	1 194	187	637	710	1 980	640	160	5 298
400	265	343	55	190	458	34	1 345	5	201	187	12	37	93	36	503	5	22 696
–	439	327	65	173	419	22	1 445	–	275	50	3	6	44	9	387	–	4 936
400	174	16	10	17	39	12	100	5	74	74	9	31	49	27	116	5	17 760
–	–	–	–	–	–	–	51 770	–	–	–	–	–	–	–	13 470	–	157 910
1 468	–	–	–	–	–	–	–	199	–	–	–	–	–	–	–	373	2 040
1 738	–	–	–	–	–	–	61 834	239	–	–	–	–	–	–	16 090	431	191 040
187	–	–	–	–	–	–	6 610	29	–	–	–	–	–	–	1 719	46	20 421
3 413	16 283	34 675	3 386	20 318	42 159	3 393	120 214	467	8 446	5 911	750	3 169	8 674	4 329	31 279	850	371 411
–	9 464	13 367	2 309	7 410	17 949	1 158	51 657	–	4 190	2 325	475	1 350	4 047	316	12 703	–	160 397
2 457	–	–	–	–	–	–	–	335	–	–	–	–	–	–	–	1 315	4 107
3 252	19 770	14 711	2 870	7 051	13 450	1 968	58 820	647	10 477	2 023	360	432	1 328	288	14 908	684	195 884
551	3 017	2 195	315	846	1 967	353	8 693	54	3 603	644	47	64	280	48	4 686	200	40 821
6 260	32 251	30 273	5 494	14 307	33 366	3 479	119 170	1 036	18 270	4 992	882	1 846	5 655	652	32 297	2 199	401 209
2 847	15 968	4 402	2 108	6 011	8 793	86	1 044	569	9 824	919	132	1 323	3 019	3 677	1 918	1 349	29 796
1 822	8 967	18 550	1 804	10 254	22 882	1 541	63 998	270	4 424	3 134	397	1 679	4 762	1 856	16 252	457	196 669
3 064	15 885	15 036	2 764	6 915	17 092	1 731	59 423	578	7 730	2 343	438	975	3 080	369	14 995	1 152	196 669
1 242	6 916	3 514	960	3 339	5 790	190	4 575	308	3 306	791	41	704	1 682	1 487	1 317	695	–
746	3 334	6 682	708	3 896	8 274	563	23 457	91	3 954	2 182	173	700	2 200	1 540	10 749	688	79 338
1 384	7 257	5 476	1 089	2 237	4 792	843	21 694	229	7 047	1 327	149	182	664	142	9 511	987	79 338
638	3 923	1 206	381	1 659	3 482	280	1 763	138	3 093	855	24	518	1 536	1 398	1 238	299	–
2 987	19 840	20 105	3 426	8 982	17 577	–	69 930	364	8 319	2 101	559	1 035	2 352	–	14 366	681	227 247
–	15 782	13 279	2 202	5 095	10 059	–	46 417	–	6 002	1 415	379	460	1 240	–	9 496	–	137 490
–	12 871	11 406	1 987	4 342	8 358	–	38 964	–	6 407	1 704	292	486	1 055	–	9 944	–	140 046
–	28 653	24 685	4 189	9 437	18 417	–	85 381	–	12 409	3 119	671	946	2 295	–	19 440	–	277 536
2 987	8 813	4 580	763	455	840	–	15 451	364	4 090	1 018	112	89	57	–	5 074	681	50 289
3 225	26 178	22 691	4 292	10 376	22 010	–	85 547	385	18 249	3 830	818	1 300	3 551	–	27 748	1 421	284 677
–	18 345	13 226	2 403	5 082	11 815	–	50 871	–	12 330	2 365	326	414	1 402	–	16 837	–	176 493
–	10 024	8 638	1 512	3 595	6 055	–	29 824	–	10 480	1 896	241	423	909	–	13 949	–	110 906
–	28 369	21 864	3 915	8 677	17 870	–	80 695	–	22 810	4 261	567	837	2 311	–	30 786	–	287 399
3 225	2 191	827	377	1 699	4 140	–	4 852	385	4 561	431	251	463	1 240	–	3 038	1 421	2 722
1 160	4 929	3 752	795	1 533	3 677	617	15 303	289	2 579	502	82	118	388	230	3 899	282	52 042
–	5 342	4 138	812	1 679	4 064	609	16 644	–	2 646	540	77	119	425	95	3 902	–	52 042
1 160	413	386	17	146	387	8	1 341	289	67	38	5	1	37	135	3	282	–
766	4 636	3 698	643	1 419	4 116	715	15 227	159	1 850	391	74	104	485	323	3 227	171	45 990
948	6 073	4 803	815	1 859	4 310	626	18 486	154	2 560	524	90	130	413	91	3 808	207	57 099
182	1 437	1 105	172	440	194	89	3 259	5	710	133	16	26	72	232	581	36	11 109
37 044	207 766	221 117	36 060	106 256	237 378	23 620	832 197	6 738	101 776	32 142	5 755	12 954	37 099	15 727	205 453	10 448	2 805 063
39 648	252 963	228 931	43 723	102 028	238 292	21 652	887 589	8 098	131 110	32 840	6 100	10 113	36 364	4 016	220 543	10 672	3 181 326
2 604	45 197	7 814	7 663	4 228	914	1 968	55 392	1 360	29 334	698	345	2 841	735	11 711	15 090	224	376 263
2 484	14 400	11 203	2 020	4 360	9 890	1 648	43 521	538	7 511	1 532	243	329	1 029	221	10 865	718	143 431
$ 14.91	$ 14.43	$ 19.74	$ 17.85	$ 24.37	$ 24.00	$ 14.33	$ 19.12	$12.52	$ 13.55	$ 20.98	$ 23.68	$ 39.37	$ 36.05	$ 71.16	$ 18.91	$ 14.55	$ 19.56
15.96	17.57	20.43	21.65	23.40	24.09	13.15	20.39	15.05	17.46	21.44	25.10	30.74	35.34	18.17	20.30	14.86	22.13
1.05	3.14	.69	3.80	.92	.09	1.18	1.27	2.53	3.91	.46	1.42	8.63	.71	52.99	1.39	.31	2.62

[fol. 1503] (f) It will be noted from these comparisons that not a single account, species, or mode of arrival has escaped the effect of the Government's errors, and that these errors amount to from $224.00 to $254,464.00 in the aggregate costs for the respective modes of arrival. When reduced to a cost-per-car basis these differences amount to as much as 36.31% or $5.53 per car, and in the case of sheep "seconds" these differences reach an extreme of 74.47% or $52.99 per car. These differences, of course, also have an equal effect upon the profit or loss per car and, in order that this may be more clearly indicated, the following comparisons will be made:

In the Case Of	Cost per Car		Comm. per Car	Profit or Loss Per Car			
				Profit		Loss	
	Govt.	Resp.		Govt.	Resp.	Govt.	Resp.
Cattle & Calves							
Straight Cars—Single Ownership	$15.23	$20.76	$19.98	$4.75	.....	.....	$.78
Straight Cars—Plural Ownership	26.68	26.65	23.51	.....	.....	$3.17	3.14
Mixed Cars—Single Ownership	24.44	30.98	22.85	.....	.....	1.59	8.13
Mixed Cars—Plural Ownership	41.54	37.88	25.51	.....	.....	16.03	12.37
Drive-Ins	29.62	32.97	22.78	.....	.....	6.84	10.19
Seconds	15.04	15.93	10.05	.....	.....	4.99	5.88
Total Selling Service	20.08	23.62	20.03	.....	.....	.05	3.59
Buying Service	14.91	15.96	15.27	.36	.....	.....	.69
Hogs							
Straight Cars—Single Ownership	14.43	17.57	17.79	3.36	$.22	.....	.....
Straight Cars—Plural Ownership	19.74	20.43	20.36	.62	.....	.....	.07
Mixed Cars—Single Ownership	17.85	21.65	21.16	3.31	.....	.....	.49
Mixed Cars—Plural Ownership	24.37	23.40	23.33	.....	.....	1.04	.07
Drive-Ins	24.00	24.09	24.11	.11	.02	.....	.....
Seconds	14.33	13.15	11.00	.....	.....	3.33	2.15
Total Selling Service	19.12	20.39	20.34	1.22	.....	.....	.05
Buying Service	12.52	15.05	10.30	.....	.....	2.22	4.75
Sheep							
Straight Cars—Single Ownership	13.55	17.46	18.91	5.36	1.45	.....	.....
Straight Cars—Plural Ownership	20.98	21.44	20.64	.....	.....	.34	.80
Mixed Cars—Single Ownership	23.68	25.10	30.64	6.96	5.54	.....	.....
Mixed Cars—Plural Ownership	39.37	30.74	37.86	.....	7.12	1.51	.....
Drive-Ins	36.05	35.34	34.06	.....	.....	1.99	1.28
Seconds	71.16	18.17	8.10	.....	.....	63.06	10.07
Total Selling Service	18.91	20.30	21.20	2.29	.90	.....	.....
Buying Service	14.55	14.86	15.13	.58	.27	.....	.....
All Species—All Modes of Arrival	19.56	22.18	20.07	.51	.....	.....	2.11

(g) In the aggregate, the above differences for all species and all modes of arrival, amount to $376,263.00, or 13.41%, representing the net under-statement of Government costs.

(h) Attention is also called to the fact that in the event the respondents' cost-per-car as properly calculated, is compared with the Government's cost-per-car which is in fact the cost-per-decklot, these differences will be found to be very much greater, since the Government's unit-costs would, of necessity, be much lower. For this reason, no comparisons can be properly made with the Government's costs as they have been prepared and submitted and, for the same reason these costs had to be restated by respond-
[fol. 1504] ents as indicated in this testimony.

38. Unit Functional Costs

(a) In view of the classification of costs for rate-making purposes, the functional costs for all respondent firms, combined, as shown on schedule No. 4 sheet 102, have been reduced to a unit-cost bases and shown on schedule No. 5. The unit-costs per-car are given in the case of rail-line arrivals, and the unit-costs per-head are given in the case of "drive-ins" and "seconds". I shall now compare the Government's functional unit-costs with those of the respondents.

(b) In connection with these figures, attention is called to the fact that in the Government's distribution of cost elements to modes of arrival, "Office Salaries" and "Administration & General Salaries" were combined. For the purpose of this comparison, the respondents have separated them.

(c) From these comparisons, it will be noted that the Government's omission of essential costs, and its use of various erroneous methods of distributing salaries and expenses to species and as between modes of arrival, have so completely disturbed the functional costs as to render them unworthy of consideration, and without value for rate-making purposes. In fact, their use would unquestionably operate unfairly to these commission men, and would result in injustice and inequality in the rates from the shippers standpoint.

		Straight S/O	Straight P/O	Mixed S/O	Mixed P/O	Drive-Ins*	Seconds*
Cattle & Calves							
Selling	Govt.	$7.39	10.46	11.64	15.11	.3932	.3092
Selling	Resp.	9.46	12.63	16.53	20.74	.6081	.3660
Yarding	Govt.	1.53	4.03	3.48	5.80	.1619	.0895
Yarding	Resp.	2.14	2.70	3.53	3.94	.1306	.0492
Office Salaries	Govt.	1.04	3.69	2.16	8.11	.1653	.0914
Office Salaries	Resp.	1.93	3.13	2.98	4.28	.1212	.0985
Office Expense	Govt.	.60	2.12	1.20	4.27	.0912	.0506
Office Expense	Resp.	1.10	1.74	1.54	2.20	.0647	.0515
Business Getting, Etc.	Govt.	3.72	4.65	4.52	5.23	.1450	.....
Business Getting, Etc.	Resp.	4.47	4.91	4.86	5.17	.1614	.....
Administration & General	Govt.	.31	1.02	.59	2.14	.0431	.0230
Administration & General	Resp.	.91	.76	.76	.75	.0265	.0303
Risk Expense	Govt.	.34	.39	.53	.55	.0139	.0125
Risk Expense	Resp.	.36	.37	.38	.38	.0140	.0137
Return on Capital	Govt.	.30	.32	.32	.33	.0113	.0124
Return on Capital	Resp.	.38	.41	.40	.42	.0145	.0148
Total Costs	Govt.	15.23	26.68	24.44	41.54	1.0249	.5886
Total Costs	Resp.	20.75	26.65	30.98	37.88	1.1410	.6240
[fol. 1505] Hogs							
Selling	Govt.	$6.92	$7.11	$7.47	$7.34	$.0894	$.0912
Selling	Resp.	6.45	8.25	8.75	9.47	.1227	.0852
Yarding	Govt.	1.66	2.79	2.93	4.01	.0516	.0265
Yarding	Resp.	2.53	2.70	3.45	3.57	.0445	.0155
Office Salaries	Govt.	1.08	2.92	1.59	4.40	.0482	.0225
Office Salaries	Resp.	2.03	2.51	2.56	3.09	.0379	.0219
Office Expense	Govt.	.62	1.66	.89	2.35	.0276	.0108
Office Expense	Resp.	1.10	1.34	1.38	1.59	.0207	.0121
Business Getting, Etc.	Govt.	3.20	3.82	3.82	4.44	.0478	.....
Business Getting, Etc.	Resp.	3.96	4.16	4.01	4.15	.0438	.....
Administration & General	Govt.	.29	.78	.44	1.15	.0128	.0053
Administration & General	Resp.	.71	.68	.70	.71	.0082	.0084
Risk Expense	Govt.	.34	.33	.39	.35	.0044	.0043
Risk Expense	Resp.	.37	.36	.40	.39	.0049	.0043
Return on Capital	Govt.	.32	.33	.32	.33	.005	.005
Return on Capital	Resp.	.42	.43	.40	.43	.0052	.0044
Total Costs	Govt.	14.43	19.74	17.85	24.37	.2868	.1656
Total Costs	Resp.	17.57	20.43	21.65	23.40	.2879	.1518
Sheep							
Selling	Govt.	6.17	6.43	9.30	10.10	.0485	.1151
Selling	Resp.	5.95	8.33	11.43	12.83	.0861	.0523
Yarding	Govt.	1.01	2.75	2.64	4.63	.024	.0540
Yarding	Resp.	1.73	1.94	1.84	2.60	.0203	.0082
Office Salaries	Govt.	1.06	3.65	2.92	9.10	.0405	.0929
Office Salaries	Resp.	1.95	2.84	3.44	5.42	.0266	.0137
Office Expense	Govt.	.59	2.05	1.63	5.10	.0235	.0421
Office Expense	Resp.	1.03	1.53	1.80	2.96	.0152	.0084
Business Getting Expense	Govt.	3.54	3.87	5.67	7.10	.0278	.....
Business Getting Expense	Resp.	4.69	4.82	5.09	5.42	.0228	.....
Administration & General	Govt.	.59	1.64	.88	2.66	.0132	.0404
Administration & General	Resp.	1.42	1.29	.81	.75	.0047	.0043
Risk Expense	Govt.	.34	.33	.34	.36	.0019	.0052
Risk Expense	Resp.	.35	.35	.32	.36	.0020	.0022
Return on Capital	Govt.	.25	.26	.30	.32	.0024	.0073
Return on Capital	Resp.	.34	.34	.37	.40	.0020	.0021
Total Costs	Govt.	13.55	20.98	23.68	39.37	.1818	.3570
Total Costs	Resp.	17.46	21.44	25.10	30.74	.1797	.0912

* Per Head.

[fol. 1506] 39. Effect of Low-Volume Firms on Unit-Costs

(a) In the Chicago case, as well as in other market cases, the Government has assumed that low-volume firms are necessarily inefficient, therefore, it is presumed that if they were eliminated from the market and their volume was absorbed by the larger firms, the unit-costs for the market as-a-whole would be materially reduced and commission rates could be accordingly reduced. This is not correct.

(b) Evidence will be offered in this case, as in the St. Louis case, which will show that there is no correlation between volume and unit-costs, also that the market average unit-cost, including all the low-volume firms, is in nearly all rate classifications, at or below the 60% bulk-line.

(c) Furthermore, the respondents have tested the Government's claim by deducting from the market aggregate costs, the entire costs of handling cattle and calves, hogs, and sheep, respectively, in the case of firms which during the year 1932 handled less than 50 cars of cattle and calves, 100 cars of hogs, or 100 cars of sheep, and thus arrived at a new aggregate cost for the market which assumes that this volume could have been handled by the larger firms without additional expense. On the other hand, the commissions earned by low-volume firms have not been deducted from the total for the market, which assumes that the larger firms would have handled this business. The result of this calculation is that, the percent of loss for all commission firms during 1932 changes from 9.51% to 6.55%. There would still be a very considerable loss.

(d) Of course, the assumption that the business now handled by low-volume firms could be handled by the larger firms without additional costs to them, is obviously incorrect and impracticable, but the idea suggested in these cases by the Government was given the fullest opportunity to prove its claims in order that the results would be unquestionable.

40. Efficiency of Commission Men

(a) In my opinion, the term "efficiency" as applied to the livestock commission business should represent a prop-

erly balanced combination of (1) the commission man's ability to obtain the largest amount of proceeds for the shipper consistent with market conditions, and (2) his ability to conduct his business at reasonable costs consistent with the character of his business and the conditions under which he operates. A proper consideration of "efficiency" cannot be given if either of these factors is omitted.

(b) A great deal of testimony has been given in this case by men of unquestionable ability and integrity, both in and out of the commission business, and whose interests in this case are opposed to each other, acknowledging the well known fact that the Chicago market is the price-fixing market of the world and that the commission men and buyers on this market are necessarily of the very highest standard. Therefore, the commission men at Chicago are in a position of great responsibility which is not limited to, but necessarily insures, the interests of shippers to this market, and these shippers have every reason to confidently expect the utmost in proceeds for livestock which they ship to this market. There has been no testimony in this case indicating that anyone even questions the ability of the commission men at Chicago to obtain the largest amount of proceeds for their shippers, and the Government has not offered any evidence to dispute this fact.

(c) There has been testimony in this case, however, to the effect that the price of livestock breaks at intervals of five cents, and that a difference of five cents in the price amounts to more than the commissions paid by shippers, therefore, it is obvious that the commission man's ability to obtain the best price for livestock consigned to him is of [fol. 1507] greater importance than the amount of commissions. Accordingly, any downward adjustment made in commission rates at a time such as this, when the commission men are operating their businesses without profit, would lower the standard of ability required to obtain the largest amount of proceeds for the shipper, and impair the service generally.

(d) There is, therefore, no doubt as to the satisfactory existence of the first element of the commission man's ability, namely, to obtain the largest amount of proceeds for livestock consigned to him. And so we come to the second

element—the reasonable cost of rendering the service, which the respondents believe to be represented by the composite or market weighted average costs.

41. Market Average Costs

(a) There are approximately 100 respondents firms on the Chicago market operating under uniform commission rates prescribed by the Secretary of Agriculture. The consist and character of each firm's business is unlike that of any other firm, and this is true whether their business is considered as a whole, or separately as to species, or separately as to each mode of arrival under any species. They each have more or less cattle and calves, or hogs, or sheep, than others. They each have more or less of straight cars, mixed cars, drive-ins, or seconds than others, and they each have different grades or classes of livestock under each mode of arrival, a different number of cars-per-consignment, owners-per-car, head-per-car, drafts-per-car, etc., and all these factors are changing day by day and exerting a greater or lesser influence on the cost of rendering the service. This will be noted by reference to schedules Nos. 1, 2 and 3, which show the final cost results for each of the respondent firms in such a manner as to make this condition clear.

(b) In view of the complexity of this situation and the resulting inability to compare the performance or results of one firm with that of another, but realizing the necessity for embracing all of these firms in rate considerations because they are all subject to the uniform rates prescribed, there is no doubt whatever but that the best, if not the only reasonable basis for the determination and consideration of costs, is the weighted-average unit-cost for all the respondents.

(c) There are cases to be found in the 1932 cost statements where a respondent having a small volume of business expended an amount per-car in the handling of it which was greatly in excess of the commissions received, and certain witnesses in this case have been asked if, in such an instance, they believed that the commission rates should be increased to the point of covering such costs. I believe this question could quite properly be answered both

"yes" and "no". The answer "yes" would consider that although, through either over-conscientiousness or lack of volume, the commission man operated at a heavy loss, the shipper, nevertheless, did not have to pay for it although he received the benefit. I doubt if any such shippers would complain. The answer "no" would consider that if such instances carried enough weight they would influence the market-weighted-average-cost in rate making. However, it has already been proven that they do not carry such influence.

(d) Since it has been shown (1) that these commission men are highly efficient from the standpoint of proceeds obtained for livestock sold, (2) that this element of efficiency prevails among the low-volume as well as the high-volume firms, (3) that high-costs in low-volume firms does not carry sufficient weight to affect the costs upon which rates are fixed, (4) that high-costs in low-volume firms may be of benefit to those particular shippers, (5) that there is no correlation between volume and unit-costs, indicating that low-volume firms are just as efficient from a cost [fol. 1508] standpoint as high-volume firms, there remains no sound reason why the market-weighted-average-cost should not be considered the proper basis for rate-determinations, to whatever extent any costs may be so considered. By use of the market average, each firm finds its own level as to profits or losses, and the natural law of economics will operate to make whatever adjustments or eliminations may be necessary.

42. Government's Unfair Consideration of Business Getting Salaries

(a) Business getting and maintaining salaries as classified in cost statements merely represent a sub-division of salesmen's salaries covering that part of their time which is spent in the country (almost entirely on week-ends) for the purpose of assisting their patrons through the giving of advice as to feeding, marketing, etc., of livestock, and for the purpose of soliciting new business and maintaining existing business which could not otherwise be held. The costs shown under this heading merely represent an accounting classification of that part of the salesmen's salaries which would necessarily be incurred whether or not

there was any business getting activity at all, and further represents the commission man's method of putting to a useful purpose necessary salary expense which could not be avoided and which would not otherwise be productive.

(b) The Government, in previous cases, has taken advantage of the cost accounting necessities and treated business getting salaries for rate making purposes just as though they represented separate and additional expenses incurred for the specific purpose of business getting. Furthermore, the Government, after having taken advantage of this cost accounting classification and placed that part of salesmen's salaries "out on a limb", so to speak, proceed to cut the limb off as unnecessary business getting expense, but omit to restore these inseparable salary parts to their counterparts, thus leaving the commission man without sufficient income to maintain his selling organization. In this way, the Government's rate-making method or policy is highly unfair and impracticable and places even the most efficient commission man in an impossible situation.

43. Government's Unfair Method of Determining Reasonable Cost of Salesmanship

[fol. 1509] (f) With reference to this subject, particularly the Government's elimination of part of salesmen's salaries as unnecessary business getting expense, I would like to point to the same objectionable method employed by the Government in the preparation of statistics as to the number of cars of livestock actually sold during the year 1932. I refer to Government Exhibit No. 49, pages 280 to 282. It will be noted that the number of salesmen, buyers and yardmen are shown, then divided into the number of cars sold, the product presumably representing the number of cars handled per salesman, buyer, or yardman during the year 1932, but this is not a proper method and the result is misleading. Salesmen, for example, have various duties which must necessarily be performed before and after the actual "showing and selling" function, all of which are essentially an inseparable part of "selling". The salesman must look over his mail and review market

conditions before going into the yards, he may have to assist somewhat in receiving the livestock, he assists with the weighing, he writes letters covering the sales he has made, and he makes country trips. These duties, in the aggregate, consume a very considerable part of his time but, for cost-accounting purposes, are mostly charged to sub-classifications of the selling service.

(g) The Government takes advantage of this situation and, if a salesman devoted but 55% of his time to the actual "showing and selling" function of selling, and the other 45% to other essential salesman's duties, the Government considers that he is only 55% of a salesman and he has been so counted in arriving at the number of cars of livestock he sold as indicated by Government Exhibit No. 49 at pages 280 to 282. This practice assumes that a commission man need only employ 55% of a whole salesman for selling even though all his time is required for various selling activities. The same method is applied to yardmen. [fol. 1510] Again I say that the Government's method or policy is highly unfair and impractical and places even the most efficient commission man in an impossible situation.

(h) In this connection, the respondents have prepared corrected information as to the number of cars of livestock actually sold by the salesmen of each firm during the year 1932, treating a salesman as a complete individual instead of assuming that 45%, or some other percent, of him can be eliminated through the processes of accounting. This data may be found on schedules Nos. 24-a, 24-b and 24-c. They show that, during the entire year 1932, there was an average of 394 cars of cattle and calves, 385 cars of hogs, and 465 cars of sheep, sold per salesman. In the case of cattle and calves, there were 16 firms who handled more than the average and 50 firms who handled less than the average of 394 cars. In the case of hogs, there were 29 firms who handled more than the average and 31 firms who handled less than the average of 385 cars. In the case of sheep, there were 4 firms handled more than the average and 16 firms who handled less than the average of 465 cars.

(i) Also, in the same connection, the respondents have prepared an analysis of daily sales made by the 19 time-

study firms during September, October and November, 1932. These analyses may be found on schedules Nos. 25-a to 25-f. Here, again, we have actual facts in support of the resistence of witnesses who were asked to base estimates of their selling capacity on ideal or average conditions. These schedules show that there is no such thing as an average or typical day on which an estimate could be based, and they show that the fabulous estimates extracted from witnesses as to their selling capacity are mere ideals, have no relation to the actual practical experience of record, and can serve no proper purpose in rate-making except to fulfill the purposes of predetermined standards.

44. Government's Impractical and Unfair Basis for Measuring the Capacity of Salesmen

(a) The Government's consideration of and allowances for "salesmanship" have been based on the "number of carlots" as a unit for measuring the capacity of salesmen. The records and testimony in this case clearly indicate that this method is grossly erroneous and unfair. A "carlot" is not the unit of service rendered by commission men in the sale of livestock, because carlots vary in the amount of effort and expense required to render the service according (1) to the number of "drafts" and (2) according to the sizes of "drafts" into which the carlot must be broken before it can be sold and passed over the scale.

(b) Therefore, the proper basis for considering the capacity of salesmen is the number of drafts and the sizes of drafts which must be handled and sold, in addition to which consideration would have to be given to the market and other conditions as indicated by the testimony. A carlot of say 20 head of cattle sold in 20 drafts would probably consume two or three times as much effort to handle and sell as the same carlot would if it could be handled and sold in but one draft.

(c) The commission man or salesman has little or no control over the number or sizes of drafts because he must sort the livestock according to packer's demands or purchasing practices so as to obtain the highest price for the shippers, and in doing so he must handle, sell and weigh each draft separately.

[fol. 1511] (d) It is also obvious that the number and sizes of drafts not only causes a wide variation in the commission man's effort to sell a "carlot" of livestock, but indicates the variation in the amount of service received by shippers which is not considered under the present "carlot" or "head" rate. Therefore, the carlot basis is not only unfair to the commission man but causes inequalities between shippers so that the shipper whose livestock is sold in "wholesale" drafts is required to pay part of the cost of handling the livestock of other shippers sold in "retail" drafts.

(e) The livestock business is one of the few, if not the only, business which does not recognize the principals of "wholesale" and "retail" selling. If the Government's method is pursued in this as in previous cases, these fundamentals of business practice which are universally employed will continue to be ignored, and the results will operate unfairly to the shippers as well as the commission men.

(f) There are volumes of testimony in this case based on the Government's own analyses of the account sales showing the greatly increased number of drafts which the commission men have been required to handle and sell during the last few years since the present rates were set by arbitration, and which also show the wide variation between the consists of the "carlots" with respect to drafts or effort required. It is clearly evident that the old-time carlot is a relic of the past and that the Government should change its obsolete methods to conform to these changed conditions.

45. Government's Unfair Method of Considering "Management"

(a) Another unfair method employed by the Government in rate-making is this: More than 95% of the firms operating on the Chicago market, and on other markets, are owner-managed, and in a larger per cent of the firms the owner-manager is also an active salesman. However, the Government disregards the condition existing in 95% of the firms, and proceeds to establish an allowance for "Management" separate from "Selling". Through this process, the allowance made in the case of owner-manager-salesmen for "Selling" is reduced to the same level as the allowance for employed-salesmen, then the separate allowance for "Manage-

ment" is such as to account for but a very small fraction of the reduction.

(b) Here is another case where the Government has divided an individual into separate parts, getting those parts which involve the most cost out "on a limb" so to speak, and then proceeding to cut off the limb, leaving the commission man in an incomplete and impossible situation. Since less than 5% of the firms have employee-managers, and it is not practicable for the other 95% to be so managed, the method followed by the Government is obviously unfair, and takes advantage of a practical situation through the application of technical theory.

46. Analysis of Volume of Business Handled During the Year 1932

(a) Schedules Nos. 13 to 18 inclusive show the volume of business handled during the year 1932 in various ways, namely, "Number of Head", "Number of Cars", "Number of Decklots", "Number of Drafts", "Number of Account Sales and Account Purchases", and "Amount of Commissions". On these schedules, the volume is shown sepa- [fol. 1512] rately for each respondent, by species and modes of arrival. All of these figures were taken from Government Exhibit No. 49, except the "Number of cars" for drive-ins and seconds, which were corrected on the basis of supplemental information furnished by the Government.

(b) Schedule No. 19 shows the daily receipts at Union Stock Yards, Chicago, Illinois, during the year 1932. This schedule shows the receipts separately for "cattle", "calves", "hogs" and "sheep" classified as between railline, drive-ins, throughs, and directs. All of these figures were supplied to respondents by the Union Stock Yards and Transit Co. They were assembled to indicate the drastic and irregular fluctuation in receipts from day to day, particularly within each week. These fluctuations are, of course, entirely beyond the possibility of influence or control by commission men, yet they have a greater influence upon the costs of operations than any other single factor because the commission man must be organized at all times to handle weekly peaks of volume promptly and efficiently. This creates considerable slack on the light days of the week and would create more if the commission man did not

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utilize the time for country trips, getting out circulars, etc. Eliminating Sundays and Holidays from consideration, it will be noted that cattle receipts fluctuate from 5 to 27,640 head, calves from 6 to 6,007 head, hogs from 2,238 to 80,234 head, and sheep from 615 to 42,829 head daily.

47. Analysis of Volume of Business Received by Months From 1923 to 1932

(a) Schedule No. 20 shows the monthly receipts at Union Stock Yards, Chicago, Illinois, during the years 1923 to 1932 both inclusive. This schedule shows these receipts separately for "cattle", "calves", "hogs" and "sheep" classified as between rail-line, drive-ins, throughs, and directs. These figures also were furnished to respondents by the Union Stock Yards and Transit Co., and were prepared to indicate the monthly and seasonal fluctuations in volume. The monthly receipts of cattle fluctuated from 136,890 to 335,607 head, calves from 27,286 to 93,835 head and hogs from 377,165 to 1,436,029.

48. Analysis of Volume of Business Received From 1865 to 1932

(a) Schedule No. 21 shows the annual receipts at Union Stock Yards, Chicago, Illinois, during the years 1865 to 1932, both inclusive. This schedule shows these receipts separately for "cattle", "calves", "hogs" and "sheep", also classified as between rail-line and drive-ins. The "throughs" and "directs" are included in rail-line because they could not be segregated prior to 1919, and schedule No. 20 shows them separately as far back as 1923. All of these figures were supplied to respondents by the Union Stock Yards and Transit Co.

(b) Cattle receipts reached a peak of 3,789,922 head in 1918. In 1923 receipts were 3,157,100 head. Since then they have declined to 2,005,745 in 1932. Therefore, since the present tariff rates were given effect cattle receipts have fallen off more than 36%.

(c) Calf receipts reached a peak of 847,762 head in 1925. In 1923 receipts were 760,751 head. Since then they have declined to 446,842 head. Therefore, since the present commission rates became effective calf receipts have dropped more than 41%.

(d) Hog receipts reached a peak of 10,460,134 in 1923 and have since dropped to 6,602,237 in 1932. When the "directs" are deducted from these figures, the 1923 receipts are 9,983,984 head and 1932 receipts are 2,347,497 head. Therefore, it will be seen that receipts by commission men have fallen nearly 78% since 1923 when present tariff rates became effective.

[fol. 1513] (e) Sheep receipts reached a peak of 6,055,546 head in 1912. In 1923 receipts were 4,097,833 head. Since then they have declined to 3,922,185 in 1932, or but 4.5% since present tariff rates went into effect.

(f) The per cent of "drive-ins" to the total business for each year as shown on schedule No. 21 are inclined to be misleading because, as previously explained, the "directs" are included in rail-line and total receipts. In order that the rapidly increasing volume of "drive-in" business may be more clearly noted, I have revised the per cents for the years 1923 and 1932, excluding "directs". In the case of "cattle" the per cent of drive-ins increased from .52% in 1923 to 15.18% in 1932, "calves" increased from .63% in 1923 to 21.91% in 1932, "hogs" increased from .63% in 1923 to 25.56% in 1932, and "sheep" drive-ins increased from .17% in 1923 to 9.66% in 1932.

[fol. 1514] (1) Exhibit No. 18 consists of a series of schedules Nos. 1 to 15, inclusive, which have been prepared by me as Consulting Accountant for the Chicago Live Stock Exchange, on behalf of its members, representing statistics and cost statements covering their operations during the year 1931. These schedules correspond with those already submitted by me for the year 1932,—both as to their form and to the methods employed in arriving at the figures thereon, with but one exception.

(2) This exception relates to insurance expense accruals covered by schedules Nos. 7, 7a, and 7c. These accruals represent the differences between the amount of full-coverage insurance premiums for the year 1931 and the amount of insurance premiums actually paid during that year. These differences were added to the Government's costs by respondents in order that this class of expense might be given consideration in the determination of commission rates. For the year 1932, the Government made these ac-

cruals and included them in its costs, making it unnecessary for the respondents to do so.

(3) The differences between the Government's aggregate costs for all Chicago Live Stock Exchange firms and the respondent's aggregate costs for 1931, are:

Government costs	$3,182,808.29	
Interest on Capital	47,893.00	
Government aggregate costs		$3,230,701.29
Owners' salary appraisal adjustments (Sched. 6)	$254,911.19	
Administration salaries not charged to branch Schedule No. 3	12,112.00	
Insurance exchange accruals (Schedule 7)	25,083.31	
Interest on Capital in excess of Government's allowance (Schedule No. 8)	14,527.00	
Total additions		306,633.50
Respondents aggregate costs		$3,537,334.79

(4) For the year 1931, the Government did not distribute the costs to "modes of arrival", as it did for the year 1932, therefore, comparison of the Government's and the respondents' costs cannot be made for 1931, as was done for 1932. The respondents, however, prepared detailed cost statements for 1931 as well as 1932 and a comparison of their costs by "modes of arrival" is attached hereto. This comparison indicates that:

(5) The number of carlots of cattle and calves handled during 1932 was 87,789 as compared with 102,027 during 1931, a decrease of 14,238 or 13.96%. The amount of commissions for cattle and calves during 1932 was $1,746,754 as compared with $2,014,362 during 1931, a decrease of $267,608 or 13.29%. The cost of handling cattle & calves during 1932 was $2,225,694 as compared with $2,054,424 during 1931, a decrease of $171,270 or 7.70%. Commissions per-car

for selling cattle & calves during 1932 were $20.03 as compared with $19.91 during 1931, an increase of $.12 or .60%. However, as a result of inability to reduce costs to as great an extent as the volume declined, the unit-cost per-car for selling cattle and calves during 1932 was $23.62 as compared with $21.85 during 1931, an increase of $1.77 or 8.10%.

[fol. 1515] (6) The number of carlots of hogs handled during 1932 was 44,059 as compared with 60,059 during 1931, a decrease of 16,068 or 26.72%. The amount of commissions for hogs during 1932 was $890,728 as compared with $1,073,313 during 1931, a decrease of $182,585 or 17.01%. The cost of handling hogs during 1932 was $895,-687 as compared with $1,052,204 during 1931, a decrease of $156,687 or 14.87%. Commissions per-car for selling hogs during 1932 were $20.34 as compared with $18.00 during 1931, an increase of $2.34 or 13.00%. However, as a result of inability to reduce costs to as great an extent as the volume declined, the unit-cost per-car for selling hogs during 1932 was $20.39 as compared with $17.60 during 1931, an increase of $2.79 or 15.85%.

(7) The number of carlots of sheep handled during 1932 was 11,583 as compared with 15,740 during 1931, a decrease of 4,157 or 26.41%. The amount of commissions for sheep during 1932 were $241,222 as compared with $296,416 during 1931, a decrease of 55,194 or 18.62%. The cost of handling sheep during 1932 was $231,215 as compared with $259,437 during 1931, a decrease of $28,215 or 10.88%. Commissions per car for selling sheep during 1932 were $21.20 as compared with $19.25 during 1931, an increase of $1.95 or 10.12%. However, as a result of inability to reduce costs to as great an extent as the volume declined, the unit-cost per-car for selling sheep during 1932 was $20.30 as compared with $16.95 during 1931, an increase of $3.35 or 19.76%.

(8) The number of carlots of all species handled during 1932 was 143,431 as compared with 177,894 during 1931, a decrease of 34,463 or 18.37%. The amount of commissions for all species during 1932 was $2,878,704 as compared with $3,384,091 during 1931, a decrease of $505,387 or 14.93%. The cost of handling all species during 1932 was $3,181,326 as compared with $3,537,335, a decrease of $356,009 or 10.88%. Commissions per car for all species during 1932

were $20.07 as compared with $19.02 during 1931, an increase of $1.05 or 5.52%. However, as a result of inability to reduce costs to as great an extent as the volume declined, the unit cost per-car for all species during 1932 was $22.18 as compared with $19.88 during 1931, an increase of $2.30 or 11.57%.

(9) During the year 1932 the average result of operations of all respondents was a loss of 9.51% as compared with 4.33% loss during 1931, in spite of the fact that costs were reduced 10.88%.

(10) Although the total number of carlots handled during 1932 declined 18.37% as compared with 1931, the equivalent carlots of "drive-ins" increased from 15,530 in 1931 to 22,146 in 1932, or 42.60%. Since "drive-ins" are considerably more costly to handle, this situation accounts in part for the inability of commission men to reduce their costs to as great an extent as the volume declined. The additional drafts and account sales caused during 1932 by the increased "drive-ins" was sufficient to increase the total drafts handled about 7% and the total account sales handled about 8%.

(11) Also, in spite of the decrease in the number of carlots handled during 1932 as compared with 1931, the number of drafts per-car (considering rail-line shipments only) increased from 5.27 to 5.84, or 10.81%.

(12) As indicated by volumes of testimony in this case, [fol. 1516] the number of "drive-ins" and the number of "drafts" have increased very greatly since the present commission rates were set by arbitration in 1923. This is confirmed by the 1931-1932 comparisons. These factors, although exerting a very considerable influence on the commission man's costs and the service received by shippers, are apparently ignored by the Government in its method of determining what it calls reasonable rates.

(Here follows 1 photo, folio 1517)

E: The expense, and the number of head, etc. shown in MIXED columns relate to the number of that particular species received in Mixed Cars, not to the total head all species so received.

NOTE: BLACK indicates Increase.
RED indicates Decrease.

BEFORE THE SECRETARY OF AGRICU
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 402

COMPARISON OF RESPONDENTS' 1931 AND 1932 CO

	CATTLE AND CALVES								HOG
	SELLING SERVICE							BUYING SERVICE	SELLING SER
	STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE INS	SECONDS	TOTAL		STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O
	A	B	C	D	E	F	G	H	I	J	K	L
SELLING & BUYING – 1931	425 110	177 763	44 563	89 264	136 172	127 055	999 927	41 998	117 927	113 248	23 051	55 338
SELLING & BUYING – 1932	426 938	161 253	32 777	67 325	194 008	89 683	971 985	23 202	92 845	92 462	17 679	41 296
INCREASE OR DECREASE	1 828	16 510	11 786	21 938	57 836	37 372	27 942	18 796	25 082	[illegible]	5 372	14 042
YARDING – 1931	131 597	48 548	12 653	23 863	33 322	18 141	268 124	11 685	43 833	43 545	9 330	19 923
YARDING – 1932	106 823	38 166	7 680	13 877	45 664	13 659	225 869	4 790	36 288	30 194	6 966	15 621
INCREASE OR DECREASE	24 774	10 382	4 973	9 986	12 342	4 482	42 255	6 895	7 545	13 351	2 364	4 302
OFFICE WORK – 1931	159 526	74 988	13 296	30 002	43 656	38 218	359 686	11 091	59 056	59 844	9 729	24 165
OFFICE WORK – 1932	139 809	63 303	9 111	21 298	60 292	37 314	331 127	8 773	45 119	43 114	7 943	20 376
INCREASE OR DECREASE	19 717	11 685	4 185	8 704	16 636	904	28 559	2 318	13 937	16 730	1 786	3 789
BUSINESS GETTING – 1931	236 212	71 043	14 092	22 646	30 601	–	374 594	–	78 952	68 095	10 887	23 128
BUSINESS GETTING – 1932	205 639	63 837	9 816	16 990	52 351	–	348 633	–	57 022	46 549	8 104	18 114
INCREASE OR DECREASE	30 573	7 206	4 276	5 656	21 750	–	25 961	–	21 930	21 546	2 783	5 014
ADMINISTRATION & GENERAL – 1931	71 498	18 742	3 900	5 323	8 479	12 534	120 476	2 475	23 525	17 893	3 505	6 176
ADMINISTRATION & GENERAL – 1932	58 762	14 761	2 322	3 711	13 162	10 948	103 666	1 935	15 616	11 809	2 216	4 762
INCREASE OR DECREASE	12 736	3 981	1 578	1 612	4 683	1 586	16 810	540	7 909	6 084	1 289	1 414
RETURN ON CAPITAL – 1931	19 375	5 734	1 089	1 707	2 774	3 714	34 393	1 245	7 703	6 780	1 012	2 213
RETURN ON CAPITAL – 1932	17 537	5 374	808	1 371	4 715	3 691	33 496	948	6 073	4 803	815	1 859
INCREASE OR DECREASE	1 838	360	281	336	1 941	23	897	297	1 630	1 977	197	354
AGGREGATE COSTS – 1931	1 043 318	396 818	89 593	172 805	255 004	199 662	2 157 200	68 494	330 996	309 405	57 514	130 943
AGGREGATE COSTS – 1932	955 508	346 694	62 514	124 573	370 192	155 295	2 014 776	39 648	252 963	228 931	43 723	102 028
INCREASE OR DECREASE	87 810	50 124	27 079	48 232	115 188	44 367	142 424	28 846	78 033	80 474	13 791	28 915
COMMISSIONS – 1931	1 123 442	374 079	70 554	122 063	165 439	109 578	1 965 155	49 207	354 126	333 520	57 166	135 122
COMMISSIONS – 1932	919 251	305 767	46 115	83 915	255 803	97 976	1 708 827	37 927	256 125	228 055	42 739	101 707
INCREASE OR DECREASE	204 191	68 312	24 439	38 148	90 364	11 602	256 328	11 280	98 001	105 465	14 427	33 415
PROFIT OR LOSS – 1931	80 124	22 739	19 039	50 742	89 565	90 084	192 045	19 287	23 130	24 115	348	4 179
PROFIT OR LOSS – 1932	36 257	40 927	16 399	40 658	114 389	57 317	305 949	1 721	3 162	876	984	321
INCREASE OR DECREASE	116 381	18 188	2 640	10 084	24 824	32 767	113 904	17 566	19 968	24 991	636	4 500
NUMBER OF CARLOTS – 1931	56 939	15 924	3 088	4 661	7 263	10 840	98 715	3 312	21 447	17 903	2 899	6 026
NUMBER OF CARLOTS – 1932	46 016	13 008	2 018	3 289	11 227	9 747	85 305	2 484	14 400	11 203	2 020	4 360
INCREASE OR DECREASE	10 923	2 916	1 070	1 372	3 964	1 093	13 410	828	7 047	6 700	879	1 666
COST PER CARLOT – 1931	18.32	24.92	29.01	37.07	35.11	18.42	21.85	20.68	15.43	17.28	19.84	21.73
COST PER CARLOT – 1932	20.76	26.65	30.98	37.88	32.97	15.93	23.62	15.96	17.57	20.43	21.65	23.40
INCREASE OR DECREASE	2.44	1.73	1.97	.81	2.14	2.49	1.77	4.72	2.14	3.15	1.81	1.67

YARDING – 1931	131 597	48 548	12 653	23 863	33 322	18 141	268 124	11 685	43 833	43 545	9 330	19 923	27 627
YARDING – 1932	106 823	38 166	7 680	13 877	45 664	13 659	225 869	4 790	36 288	30 194	6 966	15 621	36 834
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OFFICE WORK – 1932	139 809	63 303	9 111	21 298	60 292	37 314	331 127	8 773	45 119	43 114	7 943	20 376	48 491
INCREASE OR DECREASE	19 717	11 685	4 185	8 704	16 636	904	28 559	2 318	13 937	16 730	1 786	3 789	15 663
BUSINESS GETTING – 1931	236 212	71 043	14 092	22 646	30 601	–	374 594	–	78 952	68 099	10 887	23 128	25 565
BUSINESS GETTING – 1932	205 639	63 837	9 816	16 990	52 351	–	348 633	–	57 022	48 549	8 104	18 114	36 287
INCREASE OR DECREASE	30 573	7 206	4 276	5 656	21 750	–	25 961	–	21 930	21 546	2 783	5 014	10 722
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ADMINISTRATION & GENERAL – 1932	58 762	14 761	2 322	3 711	13 162	10 948	103 666	1 935	15 616	11 809	2 216	4 762	10 823
INCREASE OR DECREASE	12 736	3 981	1 578	1 612	4 683	1 586	16 810	540	7 909	6 084	1 289	1 414	3 198
RETURN ON CAPITAL – 1931	19 375	5 734	1 089	1 707	2 774	3 714	34 393	1 245	7 703	6 780	1 012	2 213	2 799
RETURN ON CAPITAL – 1932	17 537	5 374	808	1 371	4 715	3 691	33 496	948	6 073	4 803	815	1 859	4 310
INCREASE OR DECREASE	1 838	360	281	336	1 941	23	897	297	1 630	1 977	197	354	1 511
AGGREGATE COSTS – 1931	1 043 318	396 818	89 593	72 805	255 004	199 662	2 157 200	68 494	330 996	309 405	57 514	130 943	169 094
AGGREGATE COSTS – 1932	955 508	346 694	62 514	24 573	370 192	155 295	2 014 776	39 648	252 963	228 931	43 723	102 028	238 292
INCREASE OR DECREASE	87 810	50 124	27 079	48 232	115 188	44 367	142 424	28 846	78 033	80 474	13 791	28 915	69 198
COMMISSIONS – 1931	1 123 442	374 079	70 554	122 063	165 439	109 578	1 965 155	49 207	354 126	333 520	57 166	135 122	150 903
COMMISSIONS – 1932	919 251	305 767	46 115	93 915	255 803	97 976	1 708 827	37 927	256 125	228 055	42 739	101 707	238 433
INCREASE OR DECREASE	204 191	68 312	24 439	28 148	90 364	11 602	256 328	11 280	98 001	105 465	14 427	33 415	87 530
PROFIT OR LOSS – 1931	80 124	22 739	19 039	50 742	89 565	90 084	192 045	19 287	23 130	24 115	348	4 179	18 191
PROFIT OR LOSS – 1932	36 257	40 927	16 399	40 658	114 389	57 317	305 949	1 721	3 163	876	984	321	141
INCREASE OR DECREASE	116 381	18 188	2 640	10 084	24 824	32 767	113 904	17 566	19 968	24 991	636	4 500	18 332
NUMBER OF CARLOTS – 1931	56 939	15 924	3 088	4 661	7 263	10 840	98 715	3 312	21 447	17 903	2 899	6 026	7 273
NUMBER OF CARLOTS – 1932	46 016	13 008	2 018	3 289	11 227	9 747	85 305	2 484	14 400	11 203	2 020	4 360	9 890
INCREASE OR DECREASE	10 923	2 916	1 070	1 372	3 964	1 093	13 410	828	7 047	6 700	879	1 666	
COST PER CARLOT – 1931	18.32	24.92	29.01	37.07	35.11	18.42	21.85	20.68	15.43	17.28	19.84	21.73	23.25
COST PER CARLOT – 1932	20.76	26.65	30.98	37.88	32.97	15.93	23.62	15.96	17.57	20.43	21.65	23.40	24.09
INCREASE OR DECREASE	2.44	1.73	1.97	.81	2.14	2.49	1.77	4.72	2.14	3.15	1.81	1.67	.84
COMMISSIONS PER CARLOT – 1931	19.73	23.49	22.85	26.19	22.78	10.11	19.91	14.86	16.51	18.63	19.72	22.42	20.75
COMMISSIONS PER CARLOT – 1932	19.98	23.51	22.85	25.51	22.78	10.05	20.03	15.27	17.79	20.36	21.16	23.33	24.11
INCREASE OR DECREASE	.25	.02	–	.68	–	.06	.12	.41	1.28	1.73	1.44	.91	3.36
PROFIT OR LOSS PER CARLOT – 1931	1.41	1.43	6.16	10.88	12.33	8.31	1.94	5.82	1.08	1.35	.12	.69	2.50
PROFIT OR LOSS PER CARLOT – 1932	.78	3.14	8.13	12.37	10.19	5.88	3.59	69	.22	.07	.49	.07	.02
INCREASE OR DECREASE	2.19	1.71	1.97	1.49	2.14	2.43	1.65	5.13	.86	1.42	.37	.76	2.52

NOTE: "SELLING EXPENSE" FOR 1931 WAS INCLUDED IN "YARDING EXPENSE" AND CANNOT BE SEGREGATED. FOR THE PURPOSE OF THIS COMPARISON, THE "SELLING EXPENSE" FOR 1932 HAS ALSO BEEN INCLUDED UNDER "YARDING EXPENSE" ALTHOUGH THE 1932 COST STATEMENT PROPERLY SHOWS IT UNDER "SELLING & BUYING".

ORE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 402

1152-F

ISON OF RESPONDENTS' 1931 AND 1932 COSTS.

	HOGS								SHEEP								TOTAL ALL SPECIES
	SELLING SERVICE							BUYING SERVICE	SELLING SERVICE							BUYING SERVICE	
	STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE INS	SECONDS	TOTAL		STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE INS	SECONDS	TOTAL		
	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y
98	117 927	113 248	23 051	55 338	72 650	21 242	403 456	9 011	45 827	14 302	2 360	5 208	13 736	2 660	84 093	10 560	1 549 045
02	92 845	92 462	17 679	41 296	101 547	12 153	357 982	5 600	44 665	12 758	2 780	4 224	17 417	2 304	84 148	5 324	1 448 241
26	25 082		5 372	14 042	28 897	9 089	45 474	3 411	1 162	1 544	420	984	3 681	356	55	5 236	100 804
85	43 833	43 545	9 330	19 923	27 627	4 680	148 938	1 991	16 363	4 882	651	1 283	2 960	335	26 474	1 665	458 877
90	36 288	30 194	6 966	15 621	36 834	2 211	128 114	501	12 973	2 976	446	854	4 104	363	21 716	803	381 793
25	7 545	13 351	2 364	4 302	9 207	2 469	20 824	1 490	3 390	1 906	205	429	1 144	88	4 758	862	77 084
91	59 056	59 844	9 729	24 165	32 828	8 170	193 792	2 847	24 220	9 138	1 482	3 152	6 470	1 603	46 065	3 826	617 307
73	45 119	43 114	7 943	20 376	48 491	4 857	169 900	1 560	22 397	6 691	1 273	2 757	8 455	973	42 546	3 151	557 057
18	13 937	16 730	1 786	3 789	15 663	3 313	23 892	1 287	1 823	2 447	209	395	1 985	630	3 519	675	60 250
	78 952	68 095	10 887	23 128	25 565	–	206 627	–	35 618	9 820	1 245	1 781	4 334	–	52 798	–	634 019
	57 022	46 549	8 104	18 114	36 287	–	166 076	–	35 219	7 380	1 238	1 783	4 606	–	50 226	–	564 935
	21 930	21 546	2 783	5 014	10 722	–	40 551	–	399	2 440	7	2	272	–	2 572	–	69 084
75	23 525	17 893	3 505	6 176	7 625	4 220	62 944	.535	19 354	4 402	449	512	1 467	731	26 915	2 322	215 667
85	15 616	11 809	2 216	4 762	10 823	1 805	47 031	.283	13 296	2 511	273	365	1 369	285	18 099	1 187	172 201
40	7 909	6 084	1 289	1 414	3 198	2 415	15 913	252	6 058	1 891	176	147	96	446	8 816	1 135	43 466
45	7 703	6 780	1 012	2 213	2 799	1 217	21 724	.339	2 775	732	119	152	357	166	4 301	418	62 420
48	6 073	4 803	815	1 859	4 310	626	18 486	154	2 560	524	90	130	413	91	3 808	207	57 099
97	1 630	1 977	197	354	1 511	591	3 238	185	215	208	29	22	56	75	493	211	5 321
94	330 996	309 405	57 514	130 943	169 094	39 529	1 037 481	14 723	144 157	43 276	6 306	12 088	29 324	5 495	240 646	18 791	3 537 335
48	252 963	228 931	43 723	102 028	238 292	21 652	887 589	8 098	131 170	32 840	6 100	10 113	36 364	4 016	220 543	10 672	3 181 326
46	78 033	80 474	13 791	28 915	69 198	17 877	149 892	6 625	13 047	10 436	206	1 975	7 040	1 479	20 103	8 119	356 009
07	354 126	333 580	57 166	135 122	150 903	30 409	1 061 246	12 067	173 175	48 540	10 226	16 171	22 348	2 882	273 342	23 074	3 384 091
27	256 125	228 055	42 739	101 707	238 433	18 129	885 188	5 540	142 001	31 619	7 446	12 456	35 044	1 791	230 357	10 865	2 878 704
80	98 001	105 465	14 427	33 415	87 530	12 280	176 058	6 527	31 174	16 921	2 780	3 715	12 696	1 091	42 985	2 209	505 387
87	23 130	24 115	348	4 179	18 191	9 120	23 765	2 656	29 018	5 264	3 920	4 083	6 976	2 613	32 696	4 283	153 244
21	3 162	876	984	321	141	3 523	2 401	2 558	10 891	1 221	1 346	2 343	1 320	2 225	9 814	193	302 627
66	19 968	24 991	636	4 500	18 332	5 597	26 166	98	18 127	6 485	2 574	1 740	5 656	388	22 882	4 090	149 378
12	21 447	17 903	2 899	6 026	7 273	3 400	58 948	1 179	9 524	2 382	330	421	994	550	14 201	1 539	177 894
84	14 400	11 203	2 020	4 360	9 890	1 648	43 521	538	7 511	1 532	243	329	1 029	221	10 865	718	143 431
88	7 047	6 700	879	1 666		1 752	15 427	641	2 013	850	87	92	35	329	3 336	821	34 463
.68	15.43	17.28	19.84	21.73	23.25	11.63	17.60	12.49	15.14	18.17	19.11	28.71	29.50	9.99	16.95	12.21	19.88
.96	17.57	20.43	21.65	23.40	24.09	13.15	20.39	15.05	17.46	21.44	25.10	30.74	35.34	18.17	20.30	14.86	22.18
.72	2.14	3.15	1.81	1.67	.84	1.52	2.79	2.56	2.32	3.27	5.99	2.03	5.84	8.18	3.35	2.65	2.30
.86	16.51	18.63	19.72	22.42	20.75	8.94	18.00	10.23	18.18	20.38	30.99	38.41	22.48	5.24	19.25	14.99	19.02
.27	17.79	20.36	21.16	23.33	24.11	11.09	20.34	10.30	18.91	20.64	30.64	37.86	34.06	8.10	21.20	15.13	20.07
.41	1.28	1.73	1.44	.91	3.36	2.06	2.34	.07	.73	.26	.35	.55	11.58	2.86	1.95	.14	1.05
								2.26	3.04	2.21	11.88	9.70	7.02	4.75	2.30	2.78	.86

2	92 845	92 462	17 679	41 296	101 547	12 153	357 982	5 600	44 665	12 758	2 780	4 224	17 417	2 304	84 148	5 324	1 448 241
5	25 082	2[illegible]	5 372	14 042	28 897	9 089	45 474	3 411	1 162	1 544	420	984	3 681	356	55	5 236	100 804
5	43 833	43 545	9 330	19 923	27 627	4 680	148 938	1 991	16 363	4 882	651	1 283	2 960	335	26,474	1 665	458 877
0	36 288	30 194	6 966	15 621	36 834	2 211	128 114	501	12 973	2 976	446	854	4 104	363	21 716	803	381 793
5	7 545	13 351	2 364	4 302	9 207	2 469	20 824	1 490	3 390	1 906	205	429	1 144	88	4 758	862	77 084
1	59 056	59 844	9 729	24 165	32 828	8 170	193 792	2 847	24 220	9 138	1 482	3 152	6 470	1 603	46 065	3 826	617 307
3	45 119	43 114	7 943	20 376	48 491	4 857	169 900	1 560	22 397	6 691	1 273	2 757	8 455	973	42 546	3 151	557 057
3	13 937	16 730	1 786	3 789	15 663	3 313	23 892	1 287	1 823	2 447	209	395	1 985	630	3 519	675	60 250
	78 952	68 095	10 887	23 128	25 565	–	206 627	–	35 618	9 820	1 245	1 781	4 334	–	52 798	–	634 019
	57 022	46 549	8 104	18 114	36 287	–	166 076	–	35 219	7 380	1 238	1 783	4 606	–	50 226	–	564 935
	21 930	21 546	2 783	5 014	10 722	–	40 551	–	399	2 440	7	2	272	–	2 572	–	69 084
5	23 525	17 893	3 505	6 176	7 625	4 220	62 944	535	19 354	4 402	449	512	1 467	731	26 915	2 322	215 667
5	15 616	11 809	2 216	4 762	10 823	1 805	47 031	283	13 296	2 511	273	365	1 369	285	18 099	1 187	172 201
0	7 909	6 084	1 289	1 414	3 198	2 415	15 913	252	6 058	1 891	176	147	98	446	8 816	1 135	43 466
5	7 703	6 780	1 012	2 213	2 799	1 217	21 724	339	2 775	732	119	152	357	166	4 301	418	62 420
8	6 073	4 803	815	1 859	4 310	626	18 486	154	2 560	524	90	130	413	91	3 808	207	57 099
7	1 630	1 977	197	354	1 511	591	3 238	185	215	208	29	22	56	75	493	211	5 321
4	330 996	309 405	57 514	130 943	169 094	39 529	1 037 481	14 723	144 157	43 276	6 306	12 088	29 324	5 495	240 646	18 791	3 537 335
8	252 963	228 931	43 723	102 028	238 292	21 652	887 589	8 098	131 110	32 840	6 100	10 113	36 364	4 016	220 543	10 672	3 181 326
5	78 033	80 474	13 791	28 915	69 198	17 877	149 892	6 625	13 047	10 436	206	1 975	7 040	1 479	20 103	8 119	356 009
7	354 126	333 520	57 166	135 122	150 903	30 409	1 061 246	12 067	173 175	48 540	10 226	16 171	22 348	2 882	273 342	23 074	3 384 091
7	256 125	228 055	42 739	101 707	238 433	18 129	885 188	5 540	142 001	31 619	7 446	12 456	35 044	1 791	230 357	10 865	2 878 704
0	98 001	105 465	14 427	33 415	87 530	12 280	176 058	6 527	31 174	16 921	2 780	3 715	12 696	1 091	42 985	2 209	505 387
7	23 130	24 115	348	4 179	18 191	9 120	23 765	2 656	29 018	5 264	3 920	4 083	6 976	2 613	32 696	4 283	153 244
1	3 162	876	984	321	141	3 523	2 401	2 558	10 891	1 221	1 346	2 343	1 320	2 225	9 814	193	302 622
68	19 968	24 991	636	4 500	18 332	5 597	26 166	98	18 127	6 485	2 574	1 740	5 656	388	22 882	4 090	149 378
2	21 447	17 903	2 899	6 026	7 273	3 400	58 948	1 179	9 524	2 382	330	421	994	550	14 201	1 539	177 894
4	14 400	11 203	2 020	4 360	9 890	1 648	43 521	538	7 511	1 532	243	329	1 029	221	10 865	718	143 431
8	7 047	6 700	879	1 666		1 752	15 427	641	2 013	850	87	92	35	329	3 336	821	34 463
58	15.43	17.28	19.84	21.73	23.25	11.63	17.60	12.49	15.14	18.17	19.11	28.71	29.50	9.99	16.95	12.21	19.88
36	17.57	20.43	21.65	23.40	24.09	13.15	20.39	15.05	17.46	21.44	25.10	30.74	35.34	18.17	20.30	14.86	22.18
2	2.14	3.15	1.81	1.67	.84	1.52	2.79	2.56	2.32	3.27	5.99	2.03	5.84	8.18	3.35	2.65	2.30
36	16.51	18.63	19.72	22.42	20.75	8.94	18.00	10.23	18.18	20.38	30.99	38.41	22.48	5.24	19.25	14.99	19.02
27	17.79	20.36	21.16	23.33	24.11	11.00	20.34	10.30	18.91	20.64	30.64	37.86	34.06	8.10	21.20	15.13	20.07
41	1.28	1.73	1.44	.91	3.36	2.06	2.34	.07	.73	.26	.35	.55	11.58	2.86	1.95	.14	1.05
12	1.08	1.35	.12	.69	2.50	2.69	.40	2.26	3.04	2.21	11.88	9.70	7.02	4.75	2.30	2.78	.66
19	.22	.07	.49	.07	.02	2.15	.05	4.75	1.45	.60	5.54	7.12	1.28	10.07	.90	.27	2.11
13	.86	1.42	.37	.76	2.52	.54	.45	2.49	1.59	3.01	6.34	2.58	5.74	5.32	1.40	2.51	1.23

[fol. 1518] Cross-examination:

In my cost study Exhibit 12 is set out in detail the evidence that I wish to give in support of the figures.

Whether the Secretary could make a just and reasonable rate for the commission men and the order buyers on the Chicago stockyards based on my cost study or whether there is something in addition to the cost study that would be required, I have not been able to determine from the orders so far issued by the Secretary what procedure he follows and therefore I am not in a position to answer the question. Whether I could would depend upon the basis employed in making the rate. I could make a just and reasonable rate from the cost studies. It has always been my position that cost was not the only element that should be considered in rate-making. You would not have to use judgment if the rate were going to be based entirely upon cost.

There are other methods for fixing a rate than taking the figures set up by an accountant. I have no doubt that there are different opinions as to how a rate should be made. The cost for handling a consignment of the various kinds of livestock will differ with the various firms. I don't believe that there are any two consignments alike. There are no two consignments that are exactly alike, and therefore there would be no exact comparison between the costs of any two firms. The salesmen for the various firms will get varying amounts of salary. There are salesmen in the yard who receive a salary that we may relatively call a high salary; other salesmen will receive a low salary. Upon the cost of salesmanship only, there would be different costs affecting the different firms. There would be dif-
[fol. 1519] ferent conditions. In other words, there undoubtedly are reasons why one salesman gets more or less than another. That is one thing that would influence the cost, and the difference in the character of business as between different firms is another reason. Now when you try to combine these two and ask me to explain why one is more or less than the other, it covers more ground than I can focus into an answer. From the cost study there is a difference in the actual unit cost of selling between two or more firms doing business at Chicago. Either per head or per car, there is a difference in the costs of yarding and

the office costs and all other items of cost for the various firms. Now, with those variances or differences I would reach the figure that I would call a reasonable figure either for any one of the items or for all of the items that make up a rate schedule, by arriving at the rated average cost for all of the firms combined. I have done that by a mathematical formula. The determination of costs does not permit of the use of judgment. They are all inclusive facts. The word "cost" in my testimony means actual out-of-pocket outlay of money. It also includes the accrual of certain expenses, such as insurance premium expense where insurance was not carried with an insurance company, and in this case the Government accountant made his accruals and I accepted them in my costs. I have also set up an appraisal of salaries as being a part of what I call cost.

I have considered them. That appraisal was based upon the judgment of certain members of the appraisal committee. I believe there would naturally be differences of opinion among different men as to what any individual might be worth. That would be determined by the judgment of that committee that has been appraising the salaries. [fol. 1520] When I made my remarks a minute ago about judgment I thought that you had in mind judgment after the cost was applied. That is what my answer referred to.

In a great deal of my accounting experience in connection with rate cases, I assisted in the preparation of the accounting data but did not testify. My experience has been over a number of years in connection with these rate cases, I haven't kept track of the number of cases. In the three livestock commission rate cases, St. Joe, St. Louis, Chicago, and in the case of the original Kansas City case I prepared the data but did not testify. I have testified actually in three livestock commission cases including the present one. In each of those three cases I prepared or was in charge of the preparation of the material assembled. I don't think there have been any rate cases apart from the livestock cases where I testified as an accountant. If in my direct testimony I have expressed the views that would come with much greater weight from an attorney or from an economist, I want it to be understood that they were my expressions as an accountant and not as an attorney or an economist. Throughout my cost study I have set up various tables, compilations of costs, etc. Primarily the methods employed were based on my experience as an account-

ant. I would say that most accounting practices have originated from experience and study. There is not any text book to my knowledge that sets out the accounting principles to be used in the handling of live stock commission rate cases. I do not know of any courts that passed upon the principle used by me in my present cost study. Text books deal with the principles that have been employed in this case, and I do not know of any method that has been used in this case that does not conform to the general subject in text books. I don't think I can name a text book because in my particular case my knowledge of ac- [fol. 1521] counting came from practical experience more than from text books.

On 37-G of my cost study, I have referred to differences between me and the Government of roughly $376,000, sheet 17. The amount of $376,263 represents the aggregate difference between the Government's cost and the Respondent's cost as shown on sheet 16 of my testimony in the column headed "Total, All Species" and opposite "Aggregate Cost of Service." On sheet 1 I show the same figures under paragraph 2 entitled "Reconciliation". It appears from that that out of that $376,000, $353,000 plus are made up of the appraisal of owner's salaries, which I should explain. There are two kinds of differences involved here, one is the differences of substance and the other a difference of distribution. The difference of substance is sho n on sheet 1 and the numerous difference- in distribution are shown throughout the first 16 pages of my testimony and summary on the 16th page. In addition to the $353,000 owners' salaries, I have two items of $11,000 each, "Expenses of Other Branches Not Charged to Chicago", and then "Interest on Capital Requirements". I show a difference of $2722. I have explained that in paragraph 5-A.

The explanation as to instructions given by me to the appraisal committee will be found in paragraph 3-D on sheet 1.

In that statement I said that I supplied the committee with necessary records which I mentioned. Then I say, in the second line: "Except that I instructed the committee not to give any weight whatever in its consideration to the owners' business getting ability".

[fol. 1522] "On the other hand, it was pointed out that the volume of business actually handled by the owner's

firm was an economic factor to be considered from the standpoint of operation and responsibility." There were no other instructions given by me to the committee or to any member thereof. As far as the appraisal of salaries is concerned, there is a very considerable and important difference between the two elements that I pointed out in paragraph 3-D. In other words, a man's business getting ability, or so-called "following", is quite a different thing in his relation to salary appraisal, than the volume of business that his firm handles. I accepted the salary appraisals as they were given to me. They were used by me exactly as the committee gave them. No instructions were given by me other than those set out in this cost study. I didn't inquire into just what the committee may have considered outside of the information I gave. I took the results of those considerations and used them in my cost study. If they took anything else into consideration I don't know. If they had taken other matters into consideration whether it would in my judgment have affected the value of the appraisal would depend on what it was that they took into consideration. These men are all, or most of them, personally acquainted with each of the owners under appraisement, and undoubtedly there were personal elements that they considered that couldn't possibly be set forth in the record of their different experiences in their business that I have set up on the appraisal records. I think it is highly important that the committee should have considered what they knew of these men. They were not supposed to inform me. The appraisal was handled absolutely independent of me except for the instructions that were given them by me.

[fol. 1523] "Q. Let me get at it this way, in your opinion, what matters could have been considered by the appraisal committee not set out on the sheets which were given to them and which would have been proper to consider?

A. I don't know that I am in a position, Mr. Miles, to relate all of the things, but one of the things that impressed me is that they had knowledge of each man's salesmanship ability."

That would be acquired by them through their personal contact with the man and through their contact with the business. Those are things which could not possibly be set

forth in the tabulation or on historical records such as I was able to give them, so I think unquestionably they did, and very rightly did take into consideration things which they had personal knowledge of, which undoubtedly improved the quality of their appraisal.

The mere fact that a man's business has fallen off would not necessarily mean that his appraisal should be correspondingly reduced and I should say that the same thing would apply to increase. It depends, as I said before, on the causes that brought about the increase or decrease in his business. There are and have been many decreases in the business that were certainly not a reflection on the owners of the firm. For instance, you can't attach the responsibility for direct buying which has reduced the organization volume so terrifically, on the owners of the firm. They have no control, and yet the people who do continue to send their hogs to the market to a certain commission man, they expect just as high a quality of service today as they did before direct buying entered the picture, and so the firm is called upon to maintain as high a quality of service today as they did before direct buying reduced its volume. I think that if the committee reduced what they would consider a man's normal and proper [fol. 1524] value because of a temporary decrease in volume it was a mistake. I used the term "economic factor" in paragraph D.

I meant that if a man like Mr. Fulkerson, for example, of the National Livestock Commission Company, by reason of his superior salesmanship ability, could handle such a large volume of business as his firm does, with subordinate salesmen, that the appraisal should recognize his ability, and in the long run, as indicated by these costs, these statistics, the cost would be no greater by reason of a high appraisal given him that it might be in the case of other firms where they did not have a single man of outstanding ability, but rather had a common level of salesmen throughout their organization. And I think it will be found throughout these appraisals that where they seem especially large it is because they are an outstanding figure and are able to economize in their salesmanship in other directions. If it were not for the presence of a man like Mr. Fulkerson in his firm, he would unquestionably have to pay considerably more salary to his individual salesmen, but

it is his presence and his superior ability that enables him to get along and render the service that his patrons expect of his firm without paying the maximum salary to salesmen. I have known Mr. Emmett Fulkerson for about two years. I have been in his office frequently, but my opinion as just expressed is based on my analysis of his accounts, and my familiarity with the appraisal, etc. that goes with it, rather than any personal contact or familiarity with his qualifications. I know this, that the opinion that I have expressed is unanimous among commission men in Chicago, and I think that I can repeat it safely since I don't believe they can all be wrong. One of the bases for my opinion is the appraisal of the salary committee. The [fol. 1525] members of the appraisal committee were very well acquainted with Mr. Fulkerson and his qualifications. In expressing the opinion I have, I have not seen Mr. Fulkerson selling cattle in the yards. I have not seen any actual management of his business. I have not see- how he handles the clients or customers who come in and talk with him. The basis of my opinion is on the favorable condition of his accounts and the expressed opinions of all the men I have come in contact with on the market, which are numerous and over a long enough period for me to consider that the opinion is sound and proper.

"Q. In your judgment is the manner of handling of business merely the basis for a man's value as shown by the appraisal?

A. I don't know just what you mean by the manner in which a man's——

Q. That is whether he is successful or whether it is a losing venture?

A. I don't think that has anything to do with the way a man manages his business. That is to say, the importance that I attach to a commission man's value is the way he serves his patrons. He may be losing in his business and be the best salesman on the market."

If you knew that one man received just half the business that another man received, its effect on my opinions as to the proper amount of salary would depend on how it happens that he is only receiving half as much business as the other fellow and how he is handling what he gets. Assuming that he is handling what he gets in a 100 per cent

manner, but over a period of a year he receives only half the volume of another firm, I have stated in paragraph 3-D on sheet No. 1, I believe that the volume of business actually handled should be considered. If I were a shipper [fol. 1526] I wouldn't be interested at all in the volume of business that a man handled. I would be interested in the volume of proceeds he shipped back to me.

I didn't know that the committee didn't give any consideration to the volume of business. That is something new to me. I gave them the volume and I think they considered it. The volume was on the sheet which they had in front of them, and in spite of the fact that Mr. Ryther does not refer to it in his testimony, does not mean that they did not consistently consider it. I think unquestionably they did consider it. If they didn't, I think they omitted one of the elements that they should have considered. I don't think it would entirely destroy the value of the appraisal, but I think it would influence it.

In the last line of paragraph B, sheet 1, I used the expression "These amounts to proper levels in the determination of cost." In our case the appraisal committee determined what levels were proper as the basis for that criticism. I say the Government has made no attempt to adjust these amounts to proper levels and by "proper levels" I had in mind the fact that no matter what level the Government may have worked to, they were inconsistent, for the simple reason that the tabulations which I have shown in paragraph 3-H on page 2 show that men of the same value, regardless of the level, were given widely different salaries by the Government. In the cases that I have enumerated in paragraph 3-H, the "Profit" was substituted by the Government for "Salaries".

[fol. 1527] Wherever there was a salary shown on the books, regardless of the inconsistency of that salary, the Government took it into their account as was shown by the books, and where a salary was not shown on the books they substituted the profit which was shown on the books. I used the word "substituted" because a profit is not a salary and when you use profit for a salary, you substitute the profit for a salary. I do not mean that the Government has substituted one figure for another figure. At the bottom of page 3(a) next to the last line I have used the expres-

sion, 'It was obvious that in order to arrive at complete and correct costs a reasonable allowance'' etc. Incorrectness of the cost would be very obviously indicated by the comparison which I have made in paragraph 3-A where I show that men of the same value were given widely different "profit salaries'' so-called by the Government. The different salaries in the case of men of the same value cannot all be correct, and wherever they are incorrect the costs are also incorrect, and it is unnecessary to determine that any specific cost is incorrect when you know that the elements are incorrect.

The appraisal committee's salaries taken represents the value to the shipper in our opinion. The appraisal committee determined the value of the services of this particular owner to the shipper. It was the appraisal committee's task to determine what their value was to the shipper.

''Q. Mr. Mudd, I will read to you from page 8266 of the transcript, being volume 42, the question propounded was this, to Mr. Ryther: 'Now in those cases did you take into consideration the value of the services rendered by that man to the shipper or only the value of the services to the market agency?' A. No, I took into consideration the value of a man to the firm he is with. Q. And only to the firm? A. Only to the firm.' Will you read it please to check me on my reading?

[fol. 1528] A. Well, you can change my testimony to read: 'Value to the firm' if you want to because I don't think there is any difference between value to the firm and value to the shipper. In explanation of that answer, the product of the commission rate only results in producing commission men's costs, and assuming of course that those costs are reasonable costs, whatever is fair to the commission man is fair to the shipper, because there is no profit there. Whatever is spent is spent for the shipper and the shipper alone.''

On sheet 2 under my first tabulation, the paragraph is H, beginning at the last of the third line, ''It is fair to assume that the several owners placed on the same level by that committee rendered services of somewhat equal value'', I think it goes considerably on beyond an assumption for the simple reason that there are a number of those illustrations in my testimony where the same situation exists. In other words, the appraisal committee have indicated that a cer-

tain group of men are of equal value and the proposed salaries which were substituted by the Government in lieu of salaries are widely different in the case of the men in those groups. There are a number of groups and I don't believe they are wrong in all of them. There might be a mistake here and there but it would not be in all of them.

"Q. You state that this is done, notwithstanding Mr. Ryther's statement that they are of value to the men they are with only and not to the shipper?

A. I can't see that that relates to this situation at all, because the comparison of the ratings given by the appraisal committee to certain groups of men with the amount taken in consideration by the Government has no connection so far as I can see to the question you now bring up."

Not knowing these men personally as the appraisal committee did, I am not able to say individually that their ap- [fol. 1529] praisals are correct or incorrect, but I am able to say that from an accounting standpoint, that is to say judging from the results of these appraisals when injected into the costs, that they are reasonable. My standard of determining whether a cost is or is not extremely high is by comparison with market average in the yards. My criterion for determining whether the costs after I use the appraisal salary are or are not out of line or unduly high is the effect of the appraisal upon the cost. The effect of the appraisal upon the cost is to either increase it or decrease it. Having reached that final sum, I compare that with the cost of other market agencies in paragraph 3-G for the purpose of showing that the high salaries do not necessarily mean high unit costs. I have listed here practically all of the firms, starting with the highest salaries at the top, and showing the salary, the volume, and unit costs, and this tabulation shows very clearly that high salaries do not necessarily mean high cost. I haven't determined whether the salary appraisal is too low, but I have made a tabulation here to show that the check of the appraisal in the case of high salaries did not result necessarily in high costs.

That is a firm with a salary of $27,500, the highest salary appraisal, with a cost per car of $20.67, cattle and calves, which is with few exceptions, one of the lowest costs of the whole group. There are a few firms having lower unit

costs than that firm which has the high salaries. The highest salary shown there is not the lowest unit cost nor the highest unit cost. There are several others lower and sev- [fol. 1530] eral others higher. In "sheep" the highest unit salary is the highest unit cost but if high salaries cause high costs, you would not find this variation that I have shown in this tabulation. It would and should then unfavorably produce high costs, but it does not. If high salaries meant low unit costs you would find that as an invariable rule set up in the table but it prevails in most of these cases but I don't think it is a rule. It does not prevail in sheep.

Sheet 3, paragraph 6, subdivision A. I point out the difference, some $11,000, and state in the third line this: "This is due primarily to the fact that the Government has arbitrarily placed the value of $750 on the Exchange membership." Our valu[illegible]f the Exchange membership is $1,006.43. That is [illegible]sed on a five year average of actual selling prices. During that five years there were not any sales made by the Exchange directly to members as far as I knew but if there were any, they were not included in my tabulations. I feel quite certain there were not. I think ten years could have been taken. I felt that five years was sufficient to be representative, and that five years would be somewhat more current. A part of that five-year period was what we called the era of high price, but judging from this tabulation it was not with respect to these memberships because the high period was very notic-able in 1928, and 1929 and 1930 were noticeably low. The highest figure used by me in obtaining the average was $1,850 in 1928. And the low figure was $650.

[fol. 1531] I said "The Government has arbitrarily placed a value of $750" because there was no reason for making the amount $750 any more than making it any other amount, whereas taking the average of actual selling prices, it was not arbitrarily in the sense, as I said before, mere guessing. The $750, however, could have been nothing else but a mere guess.

Mr. Bachmann's cost study was prepared in 1932 in which he used the $750. The average sales value of the Exchange membership during the year 1932 was $691.66. The transfer fee is $100 and that is paid by the transferee. The high figure for that year was $700, $650.00 was the

low. A statement of $650 means that if the transferee pays the fee, it is included in this $650.

I have considered the furniture and fixtures based on the valuation shown by the Government's inventory of furniture and fixtures and the amount for furniture and fixtures as well as for working capital and other assets agree with the accounts as taken into the cost accountancy by the Government accountant. There is a difference between us as to the amount of interest that should be allowed. I have used 8 per cent. I have no definite figure in mind as to what that extra one percentage would cover.

Sheet 3 of the cost study, paragraph 4, sub-paragraph B, beginning "In the case of John Clay & Company" refers on the third line to an "estimate". This estimate was made by the headquarters office of John Clay & Company. They gave me most details in support of the estimate. The [fol. 1532] same situation is true with reference to sub-paragraph C where I refer to Merrion and Wilkins. The same would also apply in the case of 5-A, William R. Smith & Son. On the same sheet in paragraph 7, the tabulation has an item "Expenses and Accruals $638,000". "Salaries" include all salary payments to owners and employees including the salary appraisal and adjustment. The expenses include all out-of-pocket expense as well as the insurance premium expense accruals that were added by the Government. The word "accrual" means the equivalent of insurance premiums where the insurance was not actually carried with an insurance company.

In previous cases that I have handled upon other markets I have made the accruals and added those amounts to the Government figures but in the Chicago case the Government made the accruals instead so that I didn't have to add them. Those accruals were arrived at by taking the insurance expense on the basis of 100 per cent coverage and deducting the amounts that the various firms had actually paid during the year in the form of insurance premiums, and which would have the effect of including in the cost 100 per cent insurance coverage. Now, continuing the same item, I have deducted $2,000, that is $2,276, opposite the item "Less—Country Selling and Buying Credit as per Schedule No. 7". There was some country selling and buying for which there must have been some expense. So I calculated the item of that expense on a

basis equivalent to the expense which would not have been incurred if the sales had been made in the yards. As I [fol. 1533] understand it, those sales are not made under the supervision of the Department, and the charges are not therefore under the Department supervision. It was, therefore, considered desirable to eliminate those transactions and the expense which attaches to them from the costs which were under consideration for rate making. The analysis of commissions made by the Government auditor segregated the country commissions, and I accepted that amount as representing the country commissions.

The basis is shown on my Schedule No. 7 in detail. On this schedule a list of the firms involved in country selling is shown together with the volume of such sales made by each firm, and as indicated in that schedule, the expense which attached to country selling was determined by taking a proportion of the total expense, since the expense which attached to country selling was included in the total. The only expense that was included was that which comes under the heading of selling. In other words, it does not include overhead. The overhead would probably have gone on just the same whether this incidental country selling had taken place or not.

There was a certain questionnaire as to the time spent by the various members of the firms' employees, etc. The term "Questionnaire" covers the form on which we set forth the distribution of the time of all of the owners and employees for each of the firms. But when it came to specific information as to how much time a man devoted to a particular line of duty the firm gave i tto me. [fol. 1534] It was handled in different ways, but I think as a general rule the office man consulted each owner and each employee and had them give him the information, and he probably himself entered in on the form, but the information came from the individual owners and employees.

We accepted the reports of these various people after having verified them backwards and forwards.

Referring to the records for the Stockmens Livestock Commission Company and the salary of Mr. Sam Kuit: 15 percent of his salary was distributed to selling cattle and calves, 21 per cent to selling hogs, 2 per cent to selling sheep, 1 per cent to preparing account sales, 2 per cent to bookkeeping and miscellaneous office work, 2 per cent to

business getting as applied to hogs, 1 per cent to business getting as applied to sheep and these three business gettings relate to country trips, 12 per cent to business getting, correspondence, circulars and so forth as applied to cattle and calves, 2 per cent to business getting, correspondence, circulars and so forth as applied to hogs, 1 percent to business getting, circulars, correspondence, and so forth as applied to sheep, 10 per cent to general supervision as applied to cattle and calves, 10 per cent to general supervision as applied to hogs and 2 per cent to business getting as applied to sheep. That accounts for 100 per cent of Mr. Kuit's time. The basis for distributing 15 per cent of [fol. 1535] his salary to that particular activity was his estimate of how he spent his time during the year. One per cent of his time, as estimated by Mr. Kuit was devoted to making out account sales. And for making out those account sales I have allowed 1 per cent as salary.

"Q. I see, but regardless of the reason why you took one per cent of his salary for one per cent of his time spent in what he called bookkeeper's duties, does that not result in rather an unbalanced set-up?

A. I don't consider it so. If the owner in many of these cases didn't assist in making out these account sales he might have to employ an extra clerk whose salary might amount to much more than the excess that you refer to.

Q. But you do recognize that his, let us call it "Salary," that his salary as one of the owners of the firm is more than the salary of a bookkeeper?

A. Why naturally, just the same as every executive in each organization, and in every kind of business, performs minor duties, and if he performs office boy duties he does not get an office boy's salary.

Q. And in your opinion that is correct accounting?

A. It is always correct accounting to set down the facts, and the amount of salary that Mr. Kuit received is a statement of fact.

Q. Now, a part of that, if I understand you correctly, is a fact as to actual salary, and a part is based upon the committee's appraisal?"

In the case of all owners where the amount they receive was a nominal amount, or otherwise did not agree with their value as determined by the appraisal committee, the

appraisal value of their services was used in my cost figures. The basis for reducing head to what I may call the carlot equivalent was furnished me by the Government accountant, and for an explanation of that I will refer you to paragraph 34 of my direct testimony. A carlot is a [fol. 1536] car, whether doubledeck or single-deck.

In St. Louis I treated a double-deck as one car. If you will refer to my exhibits in the St. Louis case you will find that I have not used the term "carlot" but instead I used the term "single-deck carlot," in some instances the single-deck feature is indicated by "SD" in parenthesis, but you will find that it is always there and a single-deck carlot is just what it says it is. But what I am talking about here now is cars, not single-deck cars, and a car is a car whether it is a single-deck or a double-deck. If it is a double-deck car, it is counted as two cars, but a car is a car whether it is single or double deck, and what we are talking about here is how did I arrive at the equivalent number of carlots in single-deck carlots.

In my paragraph 27 "Differences between the Government's and Respondents' distribution of office salaries—account sales," my statement there is in substance that the Government used "account sales, owners, and drafts" and that I used "drafts" only in distributing office salaries. This paragraph 27 on sheet 11 doesn't relate to office salaries as a whole, but simply those applying to account sales. "Office salaries, other" are explained under paragraph 28. In other words, the salary item was sub-divided as between those applying to account sales, account purchases, and other. There were three subdivisions of office salaries. Paragraph 27 relates only to those which applied to account sales.

[fol. 1537] Assuming that we have three drafts for one owner and then there are three drafts for three owners, I mean that the office salary so far as it applies to account sales would be distributed equally. The labor involved there would not be three times as much work to make out these three account sales for the three owners as the one account sale for the one owner because the bulk of the work involved in making out an account sale has to do with the scale tickets, and in the case of one owner having three account sales you would have three scale tickets and in the case of three owners having three account sales

you would still have three scale tickets, so that because the bulk of your work attaches to the scale tickets, the little additional work that may be involved because an additional account sale had to be written out is of no great consequence in the distribution of expenses.

No distributions used in cost accounting are perfect, but where sufficient volume is involved the law of averages operates whether the accountant does it deliberately or not. My purpose was to adopt the distributions which would be the most equitable, and imperfection is accounted for by the law of averages.

Q. May I ask if you have used the principle then of aggregates and averages throughout your entire cost study?

A. If I had done that I would have prepared individual cost statements for each firm; I would not have broken them up into individual accounts; I would not have broken them up into individual modes of arrival. But, in order to get at a proper aggregate, you must first assemble the details and aggregate them.

Q. And that is what you did?

A. And that is what I have done.

Q. Am I to understand from your answer then that you did not use aggregates and averages?

[fol. 1538] A. I think I made it clear that I did use aggregates and averages after the details had been worked out, and that the aggregates and averages resulted from the assembling of those ideas.

Q. That is all right. Now, Mr. Mudd, your theory is that the Government, by using account sales, owners, and drafts, that that method is inaccurate. You have stated that it is a mathematical fallacy, and that each of these factors carry different weights of influence. Would not the use of the three factors then tend to balance? You have pointed out that I have taken an isolated case and with a magnifying glass have pointed out some inequities. Now will not the use of the three methods used by the Government overcome those inequities and bring it to a better result?

Mr. Boyd: I object; he hasn't pointed out that he has used inequities.

Mr. Miles: Not the three factors used by him, used by the Government auditor.

(Continuing.) Mr. Mudd, regardless of the objection, regardless of the ungrammatical construction of the question, do you get what I am trying to drive at?

A. I do, and I might follow Mr. Boyd's remark by saying that I think that my explanation of the methods I employed fully explain that I did not admit that there were inconsistencies in these figures.

Q. Not in yours?

A. In my figures. Now, in connection with the triple basis used by the Government, that of account sales, owners, and drafts, I can only say that I do not believe that two or three wrongs make a right, even though they are added together.

Q. And will you tell me just where the wrongs are in that case?

A. Well, all three can't be right.

Q. Yes, sir.

A. And in my opinion drafts is right and therefore account sales and owners is wrong, and by adding the three together you certainly can't arrive at a right.

Q. But you do believe that one method alone might be nearer right, and if wrong there would be a much greater wrong, would it not?

[fol. 1539] A. No, I do not. I believe that the simple basis of the draft is as nearly correct as any basis that you can use, and when you influence that basis by injecting other elements into it it can't improve it.

Paragraph 28 refers to "salaries" followed with the word "Other". Salary means distribution of all expenses other than account sales and account purchases. All of these expenses are distributed on the basis of carlots. Suppose in a case where there is one owner for a carlot, and five owners per carlot. In such case, if those were the only shipments involved, the expense, other office salaries, would be equally divided. Inasmuch as there are only two cars, half of the expense would be charged against the one and half against the other. Such expenses include everything except the time devoted to the account sales and account purchases. As for enumerating all the little things that office people do, I don't know that I could do that completely. It would include bookkeeping and correspondence except the time of the salesman writing letters on

account sales or account purchases. There would not be three times as much work for the three owners as for the one owner, under those matters covered by paragraph 28. This because it is less work, it is not work of a character that occurs in connection with every owner, as for instance, the preparation of account sales or the writing of a letter on an account sale. A great number of owners might come and go without any correspondence whatsoever under this heading, and we might have a half dozen owners who might create account sales. On the other hand, this classification would include time devoted to writing letters, to ordering stationery and all sorts of letters. Office work, the [fol. 1540] great bulk of the office work which attaches to an owner is included under other headings.

In paragraph 29, I use the carlots there as against the Government's three-function proposition. The question of whether one basis is more accurate than another is not a mere question of opinion. The tabulations which I have given in paragraph 27, 28 and 29 indicate very clearly the fluctuating differences which result from the application of the Government's bases as between the various modes of arrival. These fluctuations are not at all competent; in fact they are extremely irregular.

Throughout my cost study, by way of testimony, I have criticized the Government's methods. If the Government were to adopt a head rate tariff that would not eliminate most of my criticism. Even if you attempted to build costs on a headage basis you would still find yourself in a position where you would have to distribute expenses, and if the methods employed were the same as have been employed in this present case, I don't see but what they would be just as objectionable.

In Government Exhibit 50, salary questionnaires, the only function shown for either Mr. C. R. Johnson or Mr. Elmer Johnson is cattle yardmen. On my Schedule No. 24-A, Elmer Johnson is shown as a salesman. The reason why Elmer Johnson is shown as a salesman on Schedule 24-A and mainly as a yardman on the salary questionnaire, is because in the development of Schedule 24-A, which was prepared sometime after the questionnaires, we felt that [fol. 1541] Elmer Johnson should have been classed as cattle salesman rather than as cattle yardman. Under our

classification we show Elmer Johnson as being 95 per cent cattle yardman.

On Schedule 24-A I have listed all of the salesmen as sales men and shown the number of months that they worked during the year 1932. Elmer Johnson was a salesman for John Clay & Company and worked for John Clay & Company 12 months during the year 1932 as shown by Schedule 24-A. And that work, under my showing in Schedule 24-A could have been in capacities that are usually performed by a salesman aside from the direct act of selling which is but one of the many functions of the salesmen. If Elmer Johnson had been a yardman as indicated by the questionnaire, then he would not have appeared on Schedule 24-A at all.

"Q. Now, if you were to treat Mr. Johnson as being a salesman 12 months out of the year that would reduce the volume handled on an average by the various salesmen, would it not?

A. No, Mr. Miles you are again confusing the cost study with Schedule No. 24-A. The cost study is a development of classified costs covering all of John Clay's employees without identifying the individuals embraced in that study, by name; whereas, Schedule No. 24-A is a statistical statement dealing with the salesmen individually and collectively for each firm and the volume of livestock handled by them as a whole."

Schedule No. 13 shows that John Clay sold 143,790 head of cattle and calves and bought 1,988 head of cattle and calves during 1932. The corresponding number of cars show that the sales were 5,697 cars, from Schedule 14. If you treat Mr. Johnson as a salesman, full-time, you would have an average performance of 1,139 cars as shown on [fol. 1542] Schedule No. 24-A. If you were to disregard Mr. Johnson as a salesman you would have an average performance of something over 1400 cars. Whether Mr. Johnson was included in the costs as a salesman or a yardman could not possibly affect the total unit cost in any way whatsoever, and it is also quite clear that statistics showing the capacity of salesman as indicated on Schedule 24 have to do with salesmen as individuals whereas the cost study is refined to the point of dealing with salesmanship

as one of the many functions of salesmen's duties. The questionnaires upon which the costs were based now show 95 per cent of his salary charged to yardage, whereas he was actually a salesman. Now, if he is a salesman his time, this 95 per cent of his time was devoted to selling instead of yarding, then the correction would have the effect of increasing the cost of selling as shown in my cost study and decreasing the cost of yarding.

As a salesman the classification of his salary in the costs would be changed from yarding to selling, thereby increasing the cost of selling. As a yardman no change in the cost would be necessary, but a change in Schedule No. 24-A would be necessary. If Elmer Johnson was not a salesman he would be eliminated from Schedule 24-A entirely.

In the case of Mr. Rinderle he does nothing but supervise. In the cost it is therefore proper to include whatever part of his time was devoted to the supervision of selling in the selling cost, but in the statistics as shown on Schedule 24 we did not feel that it would be proper to include it because he was not directly concerned with the selling. It was entirely supervision. We have not included Mr. Rin- [fol. 1543] derle himself on Schedule 24. The result of that is that we have not reduced the average number of cars per salesman as would have been done if we had included Mr. Rinderle in this list of salesmen. Assuming that Mr. Rinderle did nothing in the way of selling, that is either directly or indirectly, that fact would necessitate a change in my cost study. He spent nearly 41 per cent of his time in supervising the selling, as in the case of all other owners and employees who did not perform the duties which are shown on that questionnaire, changes would be necessary in the cost study. Assuming that he did nothing about selling, then we would have to transfer that part of his time to the function that he actually did perform, but that, as stated in the case of John Clay, would in no way affect the total cost. It would simply transfer that part of his salary to another classification. If Mr. Rinderle had not supervised the selling, the result would be to reduce the selling cost, just as in the case of Clay the result would be to increase the selling cost.

If Mr. Young had been in the service of Stafford Brothers and his services were such as would make it proper for

them to continue paying him during his absence on account of illness, or for other good reason, the salary so paid would be properly included in the cost just the same as salaries of employees on vacation is a proper element of [fol. 1544] cost. The period of time might enlarge the question but I do not believe it affects the correctness of the account keeping. If we had included Mr. Young, however, which we did not do, in the statistics shown on Schedule 24-A, it would have had the result of reducing the average number of cars per salesman.

Mr. Hager of Merrion & Wilkins Co. is shown on the questionnaire as having devoted over 37 per cent of his time to sheep selling, 11 per cent to sheep buying and 31 per cent to sheep yarding, and he is included as a salesman on Schedule 24-C. Assuming that he does no selling, it would require a transfer of that part of his salary from the classification selling to the classification for whatever function he performs instead. On Schedule 24-C it would require his elimination entirely. It would not affect the total unit cost at all. It would affect the selling cost in one direction and some other function in the other direction to the same extent. It would reduce the selling cost and add, to the yardage cost if he performed yarding. With reference to Rence Green of Rice Brothers, 83 per cent of his time is shown against selling cattle. Three per cent is charged against selling service for another firm by the name of A. Burnett, 11 per cent against business-getting country trips, and 3 per cent against business-getting correspondence, circulars, et cetera.

"Q. Mr. Mudd, in the Government set-up in other cases we have set up as a separate item the word "Profit". If the Government were to allow the appraised salaries which you have taken in the study, should there still be profit allowed as a separate item?

[fol. 1545] A. Yes, by all means, because salary, whether appraised salary or otherwise, represents the man's compensation for the service he renders and does not include a profit which he also hopes to make out of his business.

Q. The salary appraisal was intended to allow a man all he was worth, was it not?

A. Not in the sense of including profit, but in the sense of compensating him for the services that he rendered."

I would figure profits this way: First let us take two sides and compare them—one a firm that consists purely of a manager and the cost therefore does not include any owner compensation element. They do have employees to operate the business and their compensation is included in the cost. Then take another firm, that is, an owner, but the owner does not receive any compensation in the form of salary and it therefore becomes necessary, in order to make the two firms comparable, to establish the worth of the owner's services in the case of the second firm. The appraisal was resorted to as a means of establishing the worth of the owner's services so that the cost would not omit any essential elements, but in the appraisal nothing other than costs were included, in other words, the appraisal did not include a profit, and therefore a profit, or whatever profit is to be allowed, must be considered in addition to the cost. Now, answering your question more directly in the light of this explanation, I might say that I am not prepared to suggest what allowance should be made for profit in addition to the cost as shown by my cost statement.

[fol. 1546] The time cards on which time distributions were made were carried by the individual whose time was recorded on the card and he made his own recording. They went through a checking on the part of the office men of the particular firms employing these individuals, and a secondary check on the part of my own force. Mr. Johnson made a report which is the basis for this time study. There were 19 firms involved in the time study, one of which was Clay Company, and Mr. Johnson was one of Clay Company's men covered by the time study. He made his own report. The time study shows any time that he devoted to any and all functions, including selling. It does not show volume on the sheets we have just been talking about. Volume is summarized for the firm as a whole on another sheet. It would be utterly impossible and impracticable to keep a record of the volume by individual salesmen because in perhaps most of the cases the selling is not performed by one man but only he is assisted, directly or indirectly, by others in these sales; so that the volume was assembled by firms and so summarized. If Mr. McAdams of Clay was engaged in selling on a particular date, this record would show he was engaged in selling.

In the tabulated list, under the caption "Sheep", I have set up various amounts, "Government Cost Per Car," and

then the "Respondent Cost Per Car." Opposite the word "Seconds" I show a Government cost of $71.16.

[fol. 1547] I took the Government cost statement shown on pages 287 to 550 of Government Exhibit No. 49 and summarized them exactly as they were, and then I added the costs for those firms which had been omitted by the Government because the volume was considered too small for consideration. It was necessary to make these additions in order that the total costs would be correctly stated, and it was on the basis of the totals resulting from the summarizing of Government costs that the aggregate cost for selling sheep seconds, amounting to $15,727, as shown on sheet 16 of my testimony, was determined. The number of cars of sheep seconds handled, which was 221, was then divided into this aggregate Government cost and the result is $71.16 per car. The inclusion under the heading of sheep seconds of splits, and the country sales, if any, undoubtedly had a very considerable influence on this unit cost. There was however a third influence, and this arose out of the method the Government accountant used in arriving at the equivalent number of carlots which served as a basis for the distribution of expenses and accordingly affected the cost of sheep seconds.

In connection with the Government cost per car for sheep seconds, as shown on sheet 16 of my testimony, as $71.17, the following explanation is made: In the first place, Government Exhibit No. 49, pages 226, 7 and 8, show that after omitting the two co-operative firms, there were handled during the year 1932 44,052 head of sheep seconds, 80,949 head of sheep splits, and 21,627 head of sheep country sales. The Government in calculating its costs for the [fol. 1548] respective firms included the splits and the country volume with the volume for seconds for all of its distribution of expenses to seconds on the basis of the aggregate volume which had the effect of increasing the cost of handling seconds very noticeably. In summarizing the Government costs for purposes of comparison, as shown on sheet 16 of my testimony, I used the exact costs as distributed by the Government, which aggregated $15,727 for sheep seconds for all firms, excluding the two cooperatives. Then in calculating the unit cost per car I used the correct number of cars of seconds which did not include the cars of splits and country sales, with the result that the cost per

car is shown to be $71.16. There is no relationship between seconds, splits, and country. I presume that the Government accountant included or merged them because all of them were somewhat supplementary transactions to the great bulk of business handled on the market. I have in mind the figure below which a firm would be classed as "low volume" and it is gained from the testimony and conversations on that subject. It has led me to believe that when the Government spoke of low-volume firms it had in mind firms handling less than 50 cars of cattle, 100 cars of hogs, and 100 cars of sheep, and those are the firms which I have in mind and used in connection with my remarks under paragraph 39 on sheet 18.

I recall the testimony adduced in this case from some of the commission men to the effect that they could have sold [fol. 1549] more if they had cattle or other livestock to sell. They left their answer just where you have left it. They said they could have handled more, but they omitted to add that they would have to increase their expenses in order to do it. I have no doubt but what some of them could handle a certain amount of additional volume without additional salesmen. In fact during the year 1932 I have no doubt that a number of them could have, because the livestock commission men, like the managers of any other kind of business, find it utterly impossible to reduce their expenses parallel to volume reduction. Therefore, if there is a slight reaction in volume during such a period it can be handled without additional expense. It is simply taking up the slack that necessarily occurs under declining volume. I don't object to the assumption that a greater volume could have been handled by the larger firms without additional expense but I do object to the extent to which the Government carried the assumption, and as just indicated in my remarks, I believe that some of the firms could handle a slight increase in volume, but by no means the amount of volume which would be involved if what is here classified as the low-volume firms were eliminated.

On sheet 19, at the top of the page, I have testified that any downward adjustments made in commission rates would lower the standard required. The exhibit that I have referred to, the cost study, showed that based on my figures the commission men are doing business at a loss.

The commission men who are operating at a loss could no [fol. 1550] doubt avoid that loss if they would reduce the quality of the service they now render to the shipper.

When a man says he does not always get the highest price for his livestock, it does not mean he does not get what the stock is worth. Someone else might have a better grade and get a higher price. Markets make a point of giving publicity to the highest prices obtained. It does not mean that everyone else who accepts lower price was inefficient. It simply means that they have varying quality to sell.

I would consider the number of head and the size of the drafts in which they were handled. I would also consider the weight of the animals. I think that in some of my previous testimony I have indicated that I do not consider that rates should be based entirely on costs, but that the shipper's point of view should also be considered and by that latter remark I mean the proceeds and the weight element would seem to amply recognize the proceed factor.

"Q. Mr. Mudd, without taking the specific number of dollars, but generally speaking, what would be the effect upon your cost study if instead of taking the appraised salaries you were to take only the withdrawals, whether you call it profit to the owner or salary or withdrawal, generally speaking?

A. You mean in other words if I had used the same salary figures as the Government?

Q. Yes, sir.

A. In making this statement I want to repeat and emphasize the position I have taken with respect to these appraisals, and that is that they are essentially a part of the expense that should be considered. However, in direct answer to your question, if the amount of appraisal adjustments were eliminated it would reduce the expense slightly more than 11 per cent."

[fol. 1551] The basic explanation of stand by time is given, quite completely and clearly, in Section 10-H of my testimony and that explanation would permit me to answer your question or any other question pertaining to stand by time accurately. In other words, you can't answer that question at all until you first determine whether there were any reasons why, specific reasons why, that man

should remain in the yards after the duties you refer to were completed. He may have had a telegram which informed him that another shipment was coming in that day, and that shipment had been delayed or for reasons had not arrived, and he would necessarily have to wait for it. If, as this explanation states, he were waiting for a specific kind of shipment, he would not charge his time to stand by time, but to that particular trend of the shipment. In other words, stand by time would only be that class of time where he was waiting without any specific knowledge of what he was waiting for. If the man went home, when the day is half over, you would charge that to stand by time.

I spoke of errors in connection with Mr. Bachmann's distribution. With respect to the calculation of the equivalent number of carlots as applied to truck-ins and seconds, I am inclined to think the explanation indicated that is was a slip-up on the part of a subordinate not dictated by the accountant in charge. In the course of running off some of Mr. Bachmann's figures for my use I ran across a few minor mathematical errors, but they were of no real [fol. 1552] consequence. At one time I said that "the spread would be out" because Mr. Bachmann used decklots as to truck-ins and to seconds. I mean that if he had a certain amount of expense to distribute over all of the modes of arrival, that if by reason of using decklots as a basis for the determination of equivalent carlots in truck-ins and seconds he overcharged truck-ins and seconds he necessarily undercharged the other classes of service.

For firm 18 there were 336 equivalent carlots of drive-in cattle and calves, 555 equivalent carlots of cattle and calves seconds, 153 equivalent carlots of drive-in hogs, 27 carlots, equivalent carlots of hog seconds, 54 equivalent carlots of drive-in sheep and 11 equivalent carlots of sheep seconds.

Assume that you would use Mr. Bachmann's basis, and then my own basis to show the difference there would be in unit cost for firm 18 only. In the case of cattle seconds, there were apparently no double decks and therefore there would be no difference. In the case of hogs there were shown on my statement 27 carlots and 41 decklots of seconds shown on Mr. Bachmann's statement. By using 27 carlots as a basis for calculating the unit cost of hog seconds, I would get a unit cost of $8.49 instead, a difference of about $4.40.

[fol. 1553] Redirect examination of Mr. Mudd.

By Mr. Boyd:

There is a reason for reducing seconds to carlots even though the per-head rate applies to seconds. The justification for reducing either truck-ins or seconds to carlot equivalents is to put those two classes of business on the same basis as other classes of business for purposes of distribution. As a measure of the contents, or as a measure of volume, I should say, the carlot has no practical meaning. It is only for the purpose of making comparison of costs. That stand by time in the livestock business is in no way comparable with idle time as you might find it in other industries. The term "stand by time" is a technical accounting time designed for the purpose of segregating a certain part of the time devoted by livestock men to their business, so that that particular class of time could be more correctly distributed to, or allocated to the various classes of service they render. An illustration: a man has livestock for sale on Monday. On Tuesday, an active market day, for one reason or another, he had no livestock to sell, but stayed at the yards to keep himself thoroughly posted. That would come under the accounting classification of stand by time. One of the appraisers was actually the employer of Emmett Fulkerson for a large number of years. He would therefore be thoroughly and intimately acquainted with his value to the industry.

[fol. 1554] Dr. Harry H. O'Neill, a witness for the Respondents, having been sworn, testified as follows:

Direct examination.

By Mr. Boyd:

My name is Harry H. O'Neill. I work in St. Louis and reside in Webster Cross. I am professor of economics head of the department at St. Louis University at St. Louis, Missouri. I have held that chair two years.

I did my undergraduate work at the University of Nebraska. I took my master's degree at Columbia University and did my Ph. D. work at the University of California,

Berkeley. In all three institutions I majored in economics and allied fields. I have had some experience in the marketing of livestock. We always intend to sell through local shippers, usually, but made those consignments to the regular commission merchant. In some cases where we thought we could do better, we made our own consignments.

I refer to Exhibit 22. It is a correlation study, the purpose of which was to determine or find out what degree of association existed between volume of business and costs of doing business. I supervised its preparation. The information was supplied by Mr. Mudd. Correlation is a process or method by which we find the degree of relationship or association between two or more variables. The range of correlation runs from minus one through zero to plus one. If you have a correlation that is a positive, it shows a direct [fol. 1555] relationship, and if the correlation happens to be a minus, it shows an inverse relationship. By direct relationship in this particular case, if you have a large volume, as associated with high cost you would have a direct relationship or positive correlation. If as volume increases, costs decline, you have an inverse relationship.

The experts state that if a coefficient, a correlation, is greater than .95 there is a high degree of correlation between the variables, and one of them may be quite accurately estimated from the known value of the other. If the coefficient is greater than .75 but less than .85, there is a decided amount of association between the two series. If the coefficient is greater than .40 but less than .60, there may be a fair degree of association between the two series, but any estimate of one variable from a known value of the other would ordinarily be of but little practical value. If the coefficient is less than .35, it is not likely that any significant association is present between the two series, and one of the series can not be used as the basis for estimating the value of the other. These are in general accepted by most men in the field. The first column on Exhibit 22 is headed "Firm Number". That is the number assigned by the Government to the firm under investigation. The second column is the number of carlots which have been handled by each of the firms listed, by number, under column 1. The third column is unit cost per car determined by Mr. Mudd. This cost per car is indicated for each of the firms.

[fol. 1556] The column headed "Deviation of X from Mean of X" is determined by finding the mean of the number of carlots, and when that arithmetical mean is determined, we find out how far each of the items in the carlot exceeds or is less than the mean so calculated. The same process is done to determine the deviation of Y which means unit cost per car for each item, from the mean of the column headed Unit Cost Per Car. Now, wherever the item for cost per carlot exceeds the mean—is greater than the mean—the sign of the deviation is plus. The pluses are not indicated. Wherever the item considered is less than the mean, the deviation is indicated by a minus.

In the column headed "Deviation of X Squared," we merely take the deviation of X's and square them. The deviation of Y squared is done in the same way. In the column headed "Product of X and Y," we merely multiply the deviation of X from the mean of X times the deviation of Y from the mean of Y. This is done algebraically.

When this part of the work is completed, we find a standard deviation of X squared, the sum of X squared and the sum of Y squared. The sum of the standard deviation of the sum of X squared is found by dividing the sum, for example, of X squared by the number of items. On sheet 1 of Exhibit 22 there are 95 items, I believe, so that we divide 58,587,069.30 by 95 and extract the square root. That gives you sign X. Then we determine the standard deviation of the sum of Y squared in the same manner that the [fol. 1557] standard deviation of the sum of X squared was determined. That is shown on the back of the sheet. The next step is to add algebraically the items in the column headed "Product of X and Y," being very careful to determine the sign of the signs X, because if that sum is plus, then the correlation will have a plus sign. If the sum is minus, then the correlation will be a minus or negative correlation—inverse correlation, I should say.

The method used here of determining this correlation is that used by Pearson, also known as the Pearsonian formula. This is indicated on the back of sheet 1 of Exhibit 22.

For cattle and calves in straight cars, single ownership, for the year 1932, the answer is minus 0.066. That indicates, since the correlation is apparently considerably less than any significant number, that there is little or a very small degree of relation, if any, between the volume and

costs in the case of cattle and calves based upon those figures.

Sheet No. 2 of Exhibit 22 deals with cattle and calves, straight cars, plural ownership, 1932. We find here a correlation of minus .216, which again is less than any significant relationship. It shows a very small, if any, degree of relationship.

[fol. 1558] The third sheet deals with cattle and calves, mixed cars, single ownership, 1932, and was produced in the same fashion. The result is a figure of minus .005, which indicates almost a perfect lack of relationship.

Sheet 4 deals with cattle and calves, mixed cars, plural ownership, 1932, prepared in the same way. The result is a correlation of minus .101, which indicates little or no relationship.

Sheet 5 deals with cattle and calves, drive-ins, for 1932. The result *is* a correlation was found to be a minus .219, which amount indicates little if any degree of association.

Sheet 6 covers cattle and calves, seconds 1932. This was prepared in the same way as the preceding analysis and we find a correlation of minus .26, which again indicates little or no degree of association.

Sheet 7 deals with cattle and calves, buying, all classes, 1932. The degree of correlation was found to be minus .167, which indicates very little if any degree of association.

For hogs for 1932, the results are:

Straight cars, single ownership	minus .177
Straight cars, plural ownership	minus .159
Mixed cars, single ownership	minus .008
Mixed cars, plural ownership	minus .242
Drive-ins	minus .24
[fol. 1559] Seconds	minus .003
Hogs, buying, all classes	minus .234

For sheep for 1932, the results are:

Straight cars, single ownership	minus .022
Straight cars, plural ownership	plus .002
Mixed cars, single ownership	plus .002
Mixed cars, plural ownership	plus .044
Drive-ins	minus .033
Sheep, seconds	minus .182
Buying, all classes	minus .062

The study indicates little or no degree of association between the figures for volume and costs as supplied to me. It is the method that is most generally used. In fact, it is in very general use. Where I have referred to costs, I have reference to unit costs. We have included all firms on the market and the number of items are sufficiently numerous to give quite accurate results. This case is not a question of sampling at all. We have used all the firms on the market.

Exhibit 23 was prepared under my direction and supervision. The basic figures were supplied to me by Mr. Mudd.

Exhibit 23 is a bulk line analysis of the cost of selling. [fol. 1560] This exhibit indicates the bulk line estimate, median cost, and also has indicated upon it the weighted average costs. The first sheet deals with cattle and calves, straight cars, single ownership. The first thing which was done was to rank the costs, beginning with the lowest unit cost at the top and proceeding down until the costs of all firms were indicated, the highest unit cost being at the bottom of the column. Now, this ranking of costs is indicated in column 3 under the cost per car. In the column headed Number of Carlots, we have indicated there the number of carlots that were handled at each of the unit costs as indicated in column 3 and shown in dollars and cents. I was interested in finding out what it cost to handle the cheapest ten per cent of the volume of business. I found out that the cheapest ten per cent of the cattle and calves, straight cars, single ownership, were handled at a unit cost of $16.92; that is to say, the most expensive portion of this ten per cent, the first ten per cent which were handled at the low cost, cost $16.92 per car. The bulk line for the 20 per cent, the cheapest cost for the 20 per cent, indicates a cost of $17.08. The 30 per cent bulk line indicates a cost of $18.06. When I say 30 per cent bulk line, I mean 30 per cent of the volume which was handled as the lowest unit [fol. 1561] cost indicates. That means, of course, within that 30 per cent that some of the stuff was handled at a lower cost, but the $18.06 is the unit cost of the most expensive portion of the lowest 30 per cent of the volume which was handled. The bulk line for 40 per cent of the total volume handled was $19.02. The $18.06 does not represent the average cost of the 30 per cent. It merely indicates that the most expensive portion of this lowest cost volume was $18.06. The same thing was true for the 40

per cent bulk line which was found to be $19.02. Fifty per cent of the volume of the lowest cost volume indicates a bulk line of $19.92—a bulk line cost of $19.92. The 60 per cent of the volume indicates a bulk line cost of $20.68. The 66⅔% bulk line indicates a bulk line cost of $22.24. Seventy-one and two-thirds per cent bulk line indicates a cost of $22.78. The 70% of the volume handled indicates a bulk line cost of $22.78; and the 80 per cent of the volume handled indicates a bulk line cost of $24.08. The 90 per cent of the volume handled most cheaply indicates a bulk line cost of $26.45.

The median cost is the cost to that firm which is exactly midway between the lowest unit cost and the highest unit cost; in other words, when you find the median, there are just as many cases above it as there are below it. The weighted average cost was determined by Mr. Mudd as $20.76 for cattle and calves, straight cars, single ownership. It most nearly corresponds with the 60 per cent bulk line in this particular case.

[fol. 1562] The bulk line cost analysis serves, it seems to me, two purposes. In the first place, it furnishes a basis for the use of reason in determining a fair rate. In the second place it serves as a basis for reasonableness of any rate based upon market averages. In the consideration of its first use, that is its use to furnish a basis for judgment or reason in determining rates, it is my conviction that if the problem were placed before a reasonably intelligent body of men, who were acquainted with the business in question, they would not select a bulk line less than 66-2/3 per cent. Here I am convinced that a higher bulk line would be selected. It would seem unreasonable to conclude that as much as one-third of the total volume of business, under the competitive conditions prevailing in the Chicago market, should be attained at costs that are too high. In the second case, it used as a check or a test of the market average. If the market average were so high as to include an excessive portion of the volume of business done, especially when the range of costs are wide, the bulk line analysis would indicate that the market average was too high. On the other hand, if the range of costs were narrow, and the market average did not include a large percentage of the volume of business done, it would indicate a market average that was probably too low.

[fol. 1563] Now, in the case of sheet 1 of 23, if we were to use, for example, a 50 per cent bulk line as a basis for our starting point for determining what might be considered a fair rate, the cost of the lowest 50 per cent of the volume of goods, calves and cattle, handled, straight car single ownership, would indicate that 66 firms out of the 95 per cent, roughly 67 per cent of the firms would be doing business at a cost in excess of the 50 per cent bulk line. In other words, only one third of the firms could do business within the 50 per cent bulk line, and some of them make a profit. If the 60 per cent bulk line costs were taken as a basis it would indicate that 57 out of 95 firms, or about 58 per cent of the firms would be doing business at a cost in excess of this. If the 66-2/3 per cent bulk line cost in case of cattle and calves, straight car single ownership were used there would be 51 firms out of the 95 whose costs would exceed this bulk line cost. If the 70 per cent bulk line cost were used there would be 47 firms out of 95 whose costs are in excess of the 70 per cent bulk line cost.

It seemed to me that if this problem were put up to a group of reasonably intelligent men who were acquainted with the competitive conditions which do exist in this market, that it would be very unlikely that any group would select a bulk line cost lower than the 66-2/3 per cent, and I [fol. 1564] feel that they would select a higher bulk line cost. Most people, it seems to me, would select a bulk line cost which might exceed 66-2/3 per cent by as high as 70, possibly 75 per cent. The weighted average cost is above, just slightly above the 60 per cent bulk line or just about at it. The median cost and the 70 per cent bulk line are identical in this particular case, that is, cattle and calves, straight cars, single ownership, or $22.78.

Sheet 2 of Exhibit 23 shows for the year, 1932, straight cars, plural ownership of cattle and calves, the following costs:

10%	bulk	line	$20.39
20%	"	"	22.03
30%	"	"	23.43
40%	"	"	24.04
50%	"	"	26.64
66–2/3%	"	"	29.40
70%	"	"	30.20
71–2/3%	"	"	28.15

Median $28.15; weighted average $26.65.

In the case of cattle and calves, mixed cars, single ownership, 1932, sheet 3 of 23, the 10 per cent bulk line cost was $23.17; 20 per cent was found to be $24.76; 30 per cent was [fol. 1565] found to be $27.00; 40 per cent, $28.81; 50 per cent bulk line was found to be $31.74; the 60 per cent line was found to be $33.00; 66–2/3 per cent bulk line was found to be $34.02; the 70 per cent bulk line was found to be $34.02; 80 per cent was $36.40; and 90 per cent $41.11. The weighted average cost was $30.98 nearly approximating the 50% bulk line. The median cost was $30.17.

Sheet 4 which deals with cattle and calves, mixed cars, plural ownership, 1932. The 10 per cent bulk line is found to be $28.57; 20 per cent, $31.95; the 30 per cent, $33.81; 40 per cent, $34.72; 50 per cent, $36.91; the 60 per cent, $38.81; 66–2/3 per cent, $39.65; 70 per cent, $40.58; 80 per cent is $44.15; the 90 per cent bulk line is found to be $46.33. The weighted average was $37.88 which exceeds the 50 per cent bulk line, approximately half way between 50 and 60 per cent bulk line, and the median cost is $37.89, which checks very closely with the weighted average cost.

On sheet 5 of Exhibit 23 in the case of cattle and calves, drive-ins, 1932, the 10 per cent bulk line cost was found to be $24.62; the 20 per cent bulk line cost was found to be $26.33 per car; the 30 per cent bulk line cost was found to be $29.61; the 40 per cent bulk line cost was found to be $31.50; the 50 per cent bulk line cost was found to be $33.62; 60 per cent was found to be $34.18; 66–2/3 per cent bulk line, [fol. 1566] $35.47; 70 per cent was found to be $35.78; the 80 per cent, $37.34; the 90 per cent, $40.73. The median cost was found to be $34.14 which corresponds very closely with the 60 per cent bulk line cost which is $34.18, 4 cents above. The weighted average cost was found to be $32.97 which falls somewhat less, very close to the 50 per cent bulk line cost.

Sheet 6 which deals with cattle and calves, seconds, 1932. The 10 per cent bulk line was $11.83; the 20 per cent bulk line cost was $12.62; 30 per cent bulk line cost $12.99; 40 per cent bulk line cost, $14.24; 50 per cent bulk line cost, $14.95; 60 per cent bulk line cost, $17.06; 66–2/3 per cent bulk line cost, $17.40; the 70 per cent, $17.50; 80 per cent, $18.99; 90 per cent, $20.72. Now the median cost, $17.37, corresponds very closely with the 66–2/3 per cent bulk line which

was $17.40, and the weighted average, $15.93, exceeds the 50 per cent bulk line.

On sheet 7, cattle and calves, buying, 1932, the 40 per cent bulk line cost was $14.24; the 50 per cent bulk line $15.40; the 60 per cent bulk line cost, $15.70; the 66–2/3 per cent, $16.12; the 70 per cent, $16.15. The median cost, $15.67 corresponds very closely with the 60 per cent bulk line cost. The weighted average is $15.96 which corresponds [fol. 1567] fairly closely with the 66–2/3 per cent bulk line. In connection with buying, the information which I have used does not include the costs of order buyers on the market, but as indicated, "Chicago Live Stock Exchange Firms" only.

Sheet 8 refers to hogs, straight cars, single ownership, 1932. The 40 per cent bulk line indicates the cost of $16.68; the 50 per cent bulk line indicates cost of $17.49; the 60 per cent, $17.96; the 66–2/3 bulk line, $18.91; and the 70 per cent, $19.37. Now the median cost is found to be $17.64 which corresponds very closely with the weighted average cost, the $17.57, both of them lie somewhere between the 50 and 60 per cent bulk line, nearer the 50 per cent.

Sheet 9 deals with hogs, straight cars, plural ownership. The 40 per cent bulk line cost was $19.02; the 50 per cent, $20.18; the 60 per cent, $21.00; the 66–2/3 per cent, $21.73; the 70 per cent, $21.88. The median cost was found to be $20.86; this corresponds very closely with the 60 per cent bulk line cost and exceeds the weighted average cost. The weighted average cost was $20.45. That falls between the 50 per cent and 60 per cent bulk lines.

[fol. 1568] Sheet 10 has to do with hogs, mixed cars, single ownership. In the case of hogs, mixed cars, single ownership, the 40 per cent bulk line was $18.90; the 50 per cent, $21.40; the 60 per cent, $23.32; the 66–2/3 per cent, $23.60; the 70 per cent, $24.32. The median cost was found to be $20.41 which corresponds very closely with the 50 per cent bulk line cost and also very closely with the weighted average cost of $21.65.

Sheet 11 deals with hogs, mixed cars, plural ownership. The 40 per cent bulk line cost was found to be $21.57; the 50 per cent, $22.47; the 60 per cent, $23.86; and the 66-2/3 per cent, $24.46; the 70 per cent, $25.52. The median cost, $23.86, is identical with the 60 per cent bulk line cost and

exceeds by a small amount the weighted average cost of $23.40.

Sheet 12 covers hogs, drive-ins of hogs. The 40 per cent bulk line cost was $21.90; the 50 per cent, $23.90; the 60 per cent, $24.89; the 66–2/3 per cent, $25.66; the 70 per cent, $26.01. The median cost, $25.05, falls about midway between the 60 and 61–2/3 per cent bulk line cost and exceeds the weighted average cost of $24.09. The weighted average falls between the 50 and 60 per cent bulk line.

[fol. 1569] Sheet 13 has to do with hogs, seconds. The 40 per cent bulk line cost in the case of hogs, seconds, was found to be $11.92; the 50 per cent $12.25; the 60 per cent $12.74; the 66⅔ per cent $14.04; the 70 per cent, $14.87. The median cost in this case of $12.31 is slightly greater than the 50 per cent bulk line cost. The weighted average cost of $13.15 is slightly greater than the 61⅔ per cent bulk line cost.

Sheet 14 has to do with hogs, buying, all classes. 40 per cent bulk line cost is $11.97; 50 per cent, $11.97; 60 per cent, $11.97; 66⅔ per cent is $13.25; 70 per cent is $13.67; 71⅔ per cent $15.05. The median cost for hogs, buying, all classes, $13.83, exceeds slightly the 70 per cent bulk line and is somewhat less than the weighted average cost of $15.05.

Sheet 15 covers sheep, straight cars, single ownership. The 40 per cent bulk line cost for sheep, straight cars, single ownership, was found to be $14.21; 50 per cent $14.21; 60 per cent, $16.03; 66⅔ per cent, $17.58; 70 per cent, $17.58. The median was $15.42 which falls between the 50 and 60 per cent bulk line cost, and the weighted average cost of $17.46 falls very close to the 66⅔ per cent bulk line.

[fol. 1570] Sheet 16 covers sheep, straight cars, plural ownership. In the case of sheep, straight cars, plural ownership, the 40 per cent bulk line is $17.86; the 50 per cent bulk line is $19.28; 60 per cent bulk line is $21.23; 66⅔ per cent bulk line is $21.99; 70 per cent bulk line is $21.99. The median cost of $19.67 falls somewhere between the 50 and 60 per cent bulk line, somewhat nearer the 50 per cent. The weighted average cost, $21.44, corresponds fairly closely with the 61⅔ per cent bulk line.

Sheet 17 covers sheep, mixed cars, single ownership. The 40 per cent bulk line is $21.29; the 50 per cent bulk line is

$21.89; 60 per cent, $23.33; 66⅔ per cent $26.05; 70 per cent, $26.05. The median of $21.63 corresponds very closely with the 50 per cent bulk line. The weighted average cost of $25.10 corresponds very closely with the 66⅔ per cent bulk line.

Sheet 18 covers sheep, mixed cars, plural ownership. The 40 per cent bulk line cost is $25.83; the 50 per cent is $27.11; the 60 per cent, $28.67; the 66⅔ per cent, $29.75; the 70 per cent, $33.00. The median cost is $28.00, which falls between the 50 and 60 per cent bulk line cost. The weighted average cost, $30.74; corresponds to the $29.75 bulk line cost, with the 66⅔ per cent bulk line cost of $29.75.

[fol. 1571] Sheet 19 covers sheep drive-ins. The 40 per cent bulk line cost is $31.01; the 50 per cent, $33.61; the 60 per cent is $35.55; the 66⅔ per cent $37.02; the 70 per cent $37.02. The median cost was found to be $33.55, which corresponds fairly closely to the 60 per cent bulk line.

Sheet 20 covers sheep, seconds. The 40 per cent bulk line cost was found to be $14.59; the 50 per cent, $15.14; the 60 per cent, $17.00; the 66⅔ per cent, $17.89; the 70 per cent, $18.00. The median cost, $17.94, corresponds very closely with the 70 per cent bulk line, or the 71⅔ per cent bulk line, either or both being identical in this case, and also fairly closely with the weighted average cost which is $18.17.

Sheet 21 deals with sheep, buying, all classes. The 40 per cent bulk line cost was found to be $12.24; 50 per cent, $12.24; the 60 per cent, $12.24; the 66⅔ per cent, $15.57; the 70 per cent, $17.14. The median cost of $15.43 corresponds very closely with the 66⅔ per cent bulk line of $15.57. The weighted average cost, $14.86, corresponds fairly closely with the 66⅔ per cent bulk line.

[fol. 1572] On sheet 2 of Exhibit 23 in the case of cattle and calves, straight cars, plural ownership:

If 50% bulk line cost used, 57 firms out of 93 would exceed that cost.

If 60% bulk line cost used, 48 firms out of 93 would exceed that cost.

If 66⅔ bulk line cost used, 40 firms out of 93 would exceed that cost.

If 70% bulk line cost used, 36 firms out of 93 would exceed that cost.

On sheet 3 of Exhibit 23, cattle and calves, mixed cars, single ownership:

If 50% bulk line cost used, 35 firms out of 83 would exceed that cost.

If 60% bulk line cost used, 28 firms out of 83 would exceed that cost.

If 66⅔% bulk line cost used, 23 firms out of 83 would exceed that cost.

If 70% bulk line cost used, 23 firms out of 83 would exceed that cost.

On sheet 4, cattle and calves, mixed cars, plural ownership:

If 50% bulk line cost used, 44 firms out of 84 would exceed that cost.

If 60% bulk line cost used, 36 firms out of 84 would exceed that cost.

If 66⅔% bulk line cost used, 33 firms out of 84 would exceed that cost.

If 70% bulk line cost used, 31 firms out of 84 would exceed that cost.

In the case of cattle and calves, drive-ins, sheet 5:

If 50% bulk line cost used, 50 firms out of 89 would exceed that cost.

If 60% bulk line cost used, 43 firms out of 89 would exceed that cost.

If 66⅔% bulk line cost used, 39 firms out of 89 would exceed that cost.

If 70% bulk line cost used, 36 firms out of 89 would exceed that cost.

[fol. 1573] In the case of cattle and calves, seconds, sheet 6:

If 50% bulk line cost used, 48 firms out of 67 would exceed that cost.

If 60% bulk line cost used, 36 firms out of 67 would exceed that cost.

If 66⅔% bulk line cost used, 32 firms out of 67 would exceed that cost.

If 70% bulk line cost used, 31 firms out of 67 would exceed that cost.

In the case of cattle and calves, buying, sheet 7:

If 50% bulk line cost used, 34 firms out of 67 would exceed that cost.

If 60% bulk line cost used, 32 firms out of 67 would exceed that cost.

If 66⅔% bulk line cost used, 31 firms out of 67 would exceed that cost.

If 70% bulk line cost used, 29 firms out of 67 would exceed that cost.

In the case of hogs, straight cars, single ownership, sheet 8:

If 50% bulk line cost used, 50 firms out of 95 would exceed that cost.

If 60% bulk line cost used, 45 firms out of 95 would exceed that cost.

If 66⅔% bulk line cost used, 36 firms out of 95 would exceed that cost.

If 70% bulk line cost used, 33 firms out of 95 would exceed that cost.

For hogs, straight cars, plural ownership, sheet 9 of Exhibit 23:

If 50% bulk line cost used, 48 firms out of 92 would exceed that cost.

If 60% bulk line cost used, 44 firms out of 92 would exceed that cost.

If 66⅔% bulk line cost used, 37 firms out of 92 would exceed that cost.

If 70% bulk line cost used, 36 firms out of 92 would exceed that cost.

For hogs, mixed cars, single ownership, sheet 10.

[fol. 1574] If 50% bulk line cost used, 39 firms out of 84 would exceed that cost.

If 60% bulk line cost used, 28 firms out of 84 would exceed that cost.

If 66⅔% bulk line cost used, 26 firms out of 84 would exceed that cost.

If 70% bulk line cost used, 23 firms out of 84 would exceed that cost.

For hogs, mixed cars, plural ownership, sheet 11.

If 50% bulk line cost used, 46 firms out of 84 would exceed that cost.

If 60% bulk line cost used, 39 firms out of 84 would exceed that cost.

If 66⅔% bulk line cost used, 36 firms out of 84 would exceed that cost.

If 70% bulk line cost used, 32 firms out of 84 would exceed that cost.

In the case of Sheet 12, Exhibit 23, hogs, Drive-ins:

If 50% bulk line cost used, 54 firms out of 94 would exceed that cost.

If 60% bulk line cost used, 46 firms out of 94 would exceed that cost.

If 66⅔% bulk line cost used, 43 firms out of 94 would exceed that cost.

If 70% bulk line cost used, 40 firms out of 94 would exceed that cost.

In the case of Sheet 13, hogs, seconds:

If 50% bulk line cost used, 30 firms out of 60 would exceed that cost.

If 60% bulk line cost used, 27 firms out of 60 would exceed that cost.

If 66⅔% bulk line cost used, 21 firms out of 60 would exceed that cost.

If 70% bulk line cost used, 17 firms out of 60 would exceed that cost.

[fol. 1575] In the case of hogs, buying, all classes, sheet 14:

If 50% bulk line cost used, 15 firms out of 22 would exceed that cost.

If 60% bulk line cost used, 15 firms out of 22 would exceed that cost.

If 66⅔% bulk line cost used, 12 firms out of 22 would exceed that cost.

If 70% bulk line cost used, 11 firms out of 22 would exceed that cost.

For sheep, straight cars, single ownership, Sheet 15:

If 50% bulk line cost used, 36 firms out of 66 would exceed that cost.

If 60% bulk line cost used, 27 firms out of 66 would exceed that cost.

If 66⅔% bulk line cost used, 24 firms out of 66 would exceed that cost.

If 70% bulk line cost used, 24 firms out of 66 would exceed that cost.

For sheep, straight cars, double ownership, Sheet 16:

If 50% bulk line cost used, 33 firms out of 65 would exceed that cost.

If 60% bulk line cost used, 26 firms out of 65 would exceed that cost.

If 66⅔% bulk line cost used, 24 firms out of 65 would exceed that cost.

If 70% bulk line cost used, 24 firms out of 65 would exceed that cost.

For sheep, mixed cars, single ownership, Sheet 17:

If 50% bulk line cost used, 23 firms out of 49 would exceed that cost.

If 60% bulk line cost used, 20 firms out of 49 would exceed that cost.

If 66⅔% bulk line cost used, 17 firms out of 49 would exceed that cost.

If 70% bulk line cost used, 17 firms out of 49 would exceed that cost.

[fol. 1576] Sheet 18, sheep, mixed cars, plural ownership:

If 50% bulk line cost used, 35 firms out of 67 would exceed that cost.

If 60% bulk line cost used, 30 firms out of 67 would exceed that cost.

If 66⅔% bulk line cost used, 26 firms out of 67 would exceed that cost.

If 70% bulk line cost used, 22 firms out of 67 would exceed that cost.

Sheet 19, sheep, drive-ins:

If 50% bulk line cost used, 38 firms out of 78 would exceed that cost.

If 60% bulk line cost used, 30 firms out of 78 would exceed that cost.

If 66⅔% bulk line cost used, 24 firms out of 78 would exceed that cost.

If 70% bulk line cost used, 24 firms out of 78 would exceed that cost.

Sheet 20, sheep, seconds:

If 50% bulk line cost used, 15 firms out of 22 would exceed that cost.

If 60% bulk line cost used, 13 firms out of 22 would exceed that cost.

If 66⅔% bulk line cost used, 11 firms out of 22 would exceed that cost.

If 70% bulk line cost used, 9 firms out of 22 would exceed that cost.

Sheet 21, sheep, buying:

If 50% bulk line cost used, 22 firms out of 29 would exceed that cost.

If 60% bulk line cost used, 22 firms out of 29 would exceed that cost.

If 66⅔% bulk line cost used, 12 firms out of 29 would exceed that cost.

If 70% bulk line cost used, 9 firms out of 29 would exceed that cost.

[fol. 1577] When I say that a certain number of firms would have costs which would exceed the bulk line cost, that is equivalent to saying that the number of firms having costs in excess of that bulk line would have to be considered as inefficient in order to justify the use of that bulk line for this purpose. If there is too large a proportion of the firms included or excluded by giving bulk line costs, it would seem to indicate that the bulk line used is too low or else an excessive number of firms are inefficient.

If the standard of performance or theoretical performance is way in excess of actual performance, it is rather an

evident fact that the standard or theoretical volume of sales is erroneous, because in any piece of scientific work we always subject our hypothesis, or theory, to the test of what has actually happened, or what has actually been accomplished; and so necessarily any standard that deviates by a wide margin from what has actually occurred must be wrong.

Cross-examination of Dr. O'Neill.

By Mr. Dagger:

By an efficient firm I mean a firm that has reached that point where it has little or no unused capacity and whose unit costs enable them under the given conditions to compete fairly successfully, and to receive an income from [fol. 1578] such business which will cover costs including some pure profits. I am not thinking necessarily there of a firm that is receiving the highest profit, the profits earned to be the profits earned by Marshall's concept of the representative firms. What I mean by unused capacity here is that the salesmen and the sales force have about all they can do to handle the volume of business as it comes on to the market. I am thinking of course that it is going to come on the market, perhaps a large volume for the first three or four days, and during the time that this livestock flows on, these people are about as busy as they can be under the circumstances, and with an honest attempt to secure the highest prices possible for the grade of livestock handled by them. Now, there are various degrees of efficiency of course, and I am thinking of that one that is fairly close up to the—pretty well up, I should say, towards the top of the scale, not necessarily at the top, but somewhere within shooting distance of it.

Q. And as a result of your study in Exhibit No. 22 wherein you apply your correlation theory, I take it that you would expect to find that type of efficiency in a relatively small firm as well as a relatively large firm?
[fol. 1579] A. Oh, why, certainly, that there might be firms of a small size, and middle size, and large that might be efficient.

Q. In your opinion do you think the business might be so small as to make it impossible to have an efficient organization?

A. That might be true for a short period of time, but sooner or later that firm, if it doesn't grow, will be eliminated from the field unless they have plenty of staying power and wish to carry on a business for the good of their health. That is one of the reasons why I introduced the bulk line analysis, I assumed the percentage of the business was done by firms whose costs were too high. In setting a rate the Government cannot set up a rate so that all firms, regardless of their volume, regardless of the methods used can stay in business and make sufficient income to cover proper costs.

Mr. Dagger: Doctor, would the point at which you would fix the bulk line represent the line of demarcation between efficient and inefficient firms?

A. I would say that if one were to use 100 per cent bulk line, one would consider or believe that all firms operating in a market, regardless of costs, should be considered socially necessary for the performance or the action of an even market, and therefore would be regarded as such degree of efficiency as to secure a rate which would enable them to stay in business; but, I would not, could not, subscribe to any such doctrine, and I think no other reasonable group of men reasonably well-informed about any particular line of business would draw such, or use such a bulk line. I think they would perhaps go down, perhaps as low, some might go as low as 66⅔, some might use 70, some might put it as high as 75 or 80. During the war time the Government, as I recall, used a bulk line of 90 per cent for certain growers, set a price on which they figured 90 [fol. 1580] per cent the lowest, 90 per cent of the volume which came on the market could be covered, but those were under a war time situation, but now under the situation in which peace prevails, the bulk line might be fixed somewhat lower.

Q. Have you reached any definite conclusion as to where you would draw the bulk line in this case?

A. It wasn't my particular cog to do so, but I felt that if, where you leave it to a body of men who were reasonably well informed, a group, say, of ten or seven men, I feel quite certain that one of them would set the bulk line at less than 66⅔, and I am under the impression that if there was a fair degree of competition between the firms

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involved that a higher bulk line cost might be set even as high possibly as 75 per cent.

If I set a bulk line at 75 per cent it would be my general belief that those firms whose counts were somewhat higher were, at the time that the bulk line was set operating, at costs that were too high. But during any given year some firms whose costs might exceed 75 per cent, perhaps the next year might have costs which were within the 75 per cent, because from year to year, according to Secrist's study, the identity of the firms, so far as place was concerned, tended to vary. I do not know whether any of the firms included in this study are now operatinng at 100 per cent efficiency. I am assuming that if this business is like other businesses, that such would be the case. I think that such assumption is one that could be generally ac- [fol. 1581] cepted by people who are reasonably trained in business conditions and business technique. If I were delegated to determine the reasonable unit cost by the bulk line method, the considerations I would give to the case would depend upon whether I was actually confronted with the problem. I have taken a very careful comparison of all of the tests that were available as to the point to which it might be gone in any particular case. I would first consider or try to find in my own mind, or get the reaction of a group of men as to what they felt under give- circumstances and in connection with a given business, what percentage of the firms were, could, or might reasonably be regarded as operating efficiently. Now, I would take that in consideration first, then I would try to find out what the average market costs were. I would try to investigate to see over a period of years what firms or how many firms continued in business, how many firms failed, quit business or took the bankruptcy act, and as a result by all of the available data, I think one could arrive, with a fair degree of accuracy, at a bulk line which would be, which would grant a reasonable rate to the firms concerned. I would desire this collateral information with re- [fol. 1582] spect to the operations of the individual firms in addition to the statistical material which I have set up in my exhibits. One needs to use all of the data and tests available.

I understand that the unit cost which I have used states the appraised salary, appraised by a committee.

Q. Assuming now that the appraisal committee may give a considerable weight to the volume handled by a firm in fixing the salary or the value of the services of these owners, if that be true would that not tend to give you the very result which your correlation theory has given you?

A. In other words, is the coefficient of correlation which I have found from the point of volume and costs, unit costs, influenced by the appraisal of the salaries?

Q. Yes, if it be true that those salaries were somewhat dependent upon the volume handled by a firm. In other words, that a firm was one of large value or of large volume, the salaries tended to be high, if it were a firm of low volume the salaries tended to be low.

A. Well, if the firm was one of large volume and it gave a high salary it would tend to increase costs, to attempt to associate high volume with high costs.

Q. And vice versa, it would associate low volume with low costs?

A. Yes, well, if it associates large volume with high costs, it tends, would tend to—and this were offset, and this procedure were off-set by small volume with low salaries, one appraisal might offset other appraisals and not change the coefficient of correlation. It depends upon the degree of offsetting involved.

[fol. 1583] Q. The result of that might be to bring you out to about the correlation coefficient actually arrived at, might it not?

A. Yes, it might, if it were offset, if there was a perfect offset there would not be any change in the coefficient of correlation.

I have not in this case made any study of the volume handled by each firm in relation to the organization maintained for handling that volume. I examined several, but didn't make any statistical analysis, just more or less of a casual observation of the figures.

Mr. Dagger: Are you in a position to state what influence, if any, the volume per salesman had on the unit costs which were used by you in your study, or did you make any analysis of that?

A. My assumption was in using these, when these figures were given to me, that unit costs were based upon the study of the actual conditions in the yards. I didn't make the

time study nor the cost study, but I took the figures as they were given to me.

[fol. 1584] GOVERNOR HOWARD M. GORE, a witness for the Respondents, having been sworn, testified as follows:

Direct examination:

I reside at Clarksburg, West Virginia. I commenced services with the Department of Agriculture at Washington on November 11, 1921. I was then associated with the enforcement of the Packers and Stockyards Act. Later I became Assistant Secretary. I was later Secretary of Agriculture in the cabinet of President Coolidge for a brief period. Upon leaving that office I became Governor for the State of West Virginia. Since that time I have been Commissioner of Agriculture for the State of West Virginia, for two years.

I have been a livestock producer all my business life and am still a live stock producer in West Virginia. I was a member of what is known as the Committee of Fifteen which designed the general structure of what was first used in the co-operative marketing of livestock in central markets.

I have been subpœnaed to testify in this case. I was one of the arbitrators who considered the question of Chicago commission rates as a result of an agreement entered into between the parties and approved by the Department in 1923.

[fol. 1585] I might make an explanation there. There were several other markets involved in connection with Chicago to which rates were applied at the same time, the award being made simultaneously, as I remember, effecting practically all the Mississippi basin markets. Mr. Dagger was my co-arbitrator. The agreement leading up to the final official action, was the action on the part of the parties which took place at Kansas City in which it was agreed that Mr. Dagger and myself would be accepted as the arbitrators. With particular reference to Chicago, Mr. Dagger and I went to Chicago and conducted an open hearing for the purpose of developing information in connection with the handling of business at that market.

An opportunity was given all persons desiring to be heard, to be heard, and a goodly number of producers ap-

peared. We received the cooperation of the market agencies at Chicago, the producing interests and the Government. The Department staff cooperated fully in helping us to arrive at the facts on which to base a conclusion. We made investigation pertinent to the proper aspects of marketing and those factors that entered into the determination of price, arrivals and business from day to day, and in addition to that, if you will pardon the suggestion, I have had lifelong experience in dealing with markets and market agencies and the sale, processing and distribution [fol. 1586] of the product. In other words, I have undertaken in connection with my business, before and after I was with the Department, and since that time have kept as well informed as a person can in keeping in touch with the activities entering into the determination of value of livestock to the producer.

After we had concluded our investigations we prepared a report. (Respondents' Exhibit B to the Complaint is the award of the arbitrators.)

The volume of receipts and volume handled in the ordinary course of business by a firm was, of course, one of the prime factors in determining the rates, and the quality and character of services rendered in connection with it were one of the prime factors in determining a fair compensation or reasonable compens-ion. The facts are these; that today, as compared with the time of that arbitration, it requires a much more skillful and a much better trained, and a person with a much better knack of knowing how to merchandise livestock, in all kinds of livestock that are marketed at the center markets, than it did at that day and time. At that day and time a carload was a string consignment of the larger units which make up a substantial part of the livestock received at a central market like Chicago [fol. 1587] today. If you have persons gifted in the value of loads of say cattle, as compared with other loads of cattle, they require a very high degree of skill of course, but it did not require the skill as you break carloads down into the broken lots, that it does today. Today in markets you may break a load of livestock into a number of grades and sell it at different prices, rather than against the carlot prices of days gone by. The development of the cooperative movement and cooperative shipment, where one owner may have a number of different grades in the same kind of livestock, requires a multiplicity of sales and serv-

ices that were not necessary in the days probably prior to the year 1920, using that as an index figure as it is in the sale of livestock today. In other words, persons who handle what we might call the broken lots today, must be skillful. They must be trained. In the olden days the lower-priced folks usually handled what we call the odds and ends, or the broken lots. Today the thought in marketing is to protect the person with one animal whose financial fortunes are tied up in that animal, just as certainly as myself who always ship in one or two carlots. There can be no question about the necessity for furnishing higher quality of salesmen in the grades that most generally prevail, in the type of shipments that most generally prevail today, as against 15 or 20 years ago.

[fol. 1588] The attempt was made in the arbitration to bring the rates certainly within the class of a reasonable rate, being intended to be fair both to producer and to processor—both to producer and to salesmen. Now, in marketing livestock there are things you do not put in the record and you cannot put them on paper. Salesmanship is a quality of the individual, and the ebb and flow of a market business on any market day may be ten up or ten down on the varying loads as the difference between the stock may look, a difference on the part of the salesman, even on established market business. At the time the award was made in Chicago, there were receipts of about 850,000 hogs a month. No one processor, no one can buy hogs closer than a nickel or a dime. Ten cents up or ten cents down in that month would mean, if the producer got an even break, 50-50, say on half of them he got the margin and on half of them the purchaser got the margin, would mean a sum of money almost equal to $200,000 on the receipts of hogs in one month in the city of Chicago. You apply the same principle on your cattle all the way down the line and then multiply that by the number of markets in this nation, and multiply the trading margin on a basis say that is fixed at eight cents—eight [fol. 1589] cents up, ten up and ten down, when multiplied by the amount of stock received on your Chicago market results in a staggering figure, and if the defensive or selling side is not as well equipped as the buying side, you can see that they would easily lose; that your shippers on the Chicago market would lose millions of dollars on the simple

trading market, which no expert can determine. Yesterday I had two loads of cattle on the market. One load of cattle, I think, was one of the best loads of pure bred cattle that I ever produced. They sold one pen at $4.50. Not more than just one or two pens away, a load of cattle was put off and split into a couple of loads. The less desirable ones were put in the second load and four light winter cattle which I did not want to winter were put in the other load. The first load brought $4.50 and the second brought $4.35. The man who sold the $4.50 load of cattle sold them at the top of the market for yesterday. The man who sold the second load sold it at 25 to 35 cents above the market in any circumstances and under normal market conditions he could sell it at least 65 cents above the market and thereby render a service to me. In other words, the net to me on the second class brought me almost as many dollars per hundredweight as one of the best loads I ever followed on the road. It represents superior salesman-[fol. 1590] ship. On the very next day the situation might be reversed, if you get what I mean. You can not measure service of that kind by 50 cents a load or $1.00 a load.

I do not choose my commission men on the basis of the large volume he sells. I do not believe that superior service is rendered by the man who handles or sells the greatest volume. I do not believe that the quality of service rendered or the efficiency should be based or determined upon the volume of sales made by the man or by the quality of the sales he makes. A man develops a peculiar quality of handling certain grades, qualities and kinds of livestock. Maybe one will be a good hog salesman, one may be a good sheep salesman, one may be a good cow or steer salesman, maybe a good carlot salesman. Maybe he would be absolutely helpless down in the jackpot. The situation is this: you may ship half a dozen loads of livestock to the same market. You may choose three or four different firms because of their peculiar fitness, to fit themselves to the type of stock you offer as your understand it.

It is a matter of common practice that the major buyers of livestock in the several markets of the country do not go into the market to buy until they have their instructions from the central office, usually Chicago. The selling side [fol. 1591] may or may not have that information. These folks that go into the market representing the processors

know the condition of the retail trade. They know the condition of the packers themselves. They know what is moving and what is not moving. They have first hand information with respect to the entire outlook, from the purchase of their animal until it reaches the ultimate consumer. The selling side do not have such an advantage. There is a natural monopoly on the buying side. I do not mean a vicious monopoly. There is a buying monopoly on the selling side not available to the man in the foothills of this country which we have not counteracted and which we could have counteracted if we had been intelligent about it.

The shipper of livestock has the choice of selling his livestock himself through his own cooperative, or of selling it through a company organized for profit, or he may dispose of his livestock direct to the packers at the various points set up since this award went into effect. I had rather an active part in marketing conditions about marketing centers, so that cooperatives could operate freely, and we also took away from the old-line people every incentive of advantage they had built up so that all groups might benefit by it.

[fol. 1592] The Chicago Producers Company, a corporation, handles the largest volume of any single firm on the Chicago market today. Also in Pittsburgh, where I happen to be a director. Incidentally I might say that the rates in Pittsburgh are much higher than those in effect at Chicago. I also want to say that we have not made any refunds lately. I am speaking from the record. We have not earned a profit that we felt we dared to surrender part of it back. I believe, based on my experience, that the livestock rates fixed by the Department of Agriculture should provide a sufficient sum of money to maintain the market agencies on a high basis enabling them to employ the most skillful persons to perform selling services and other services, and that the failure of the Government to make adequate provision in that regard would be very damaging to the man who raises and sells livestock in this country. To do otherwise would be to weaken the protection of the Government to the man selling livestock through these markets. To in any way weaken a situation that would attract persons of apparent capability and ability into this large industry—one of the largest in the country—is something which should be avoided under all circumstances. To drive

out such people would be damaging. The rule of reason cannot always be applied to those services, the details of [fol. 1593] which cannot be made a matter of record but which are the essence of success or failure of that individual's activities.

Cross-examination:

I am an actual producer and shipper of livestock. I usually ship to the Pittsburgh yards or the Baltimore, New York, Philadelphia or Lancaster. I haven't made a shipment to the Chicago yards I would say for ten years. That was subsequent to the arbitration award. Livestock is shipped in smaller numbers of head per shipment today. In the first place on account of the truck shipments and in the second place on account of the increase of cooperative shipments. This has brought about what you might call multiplicity of kinds and ownerships in one car.

There has been a constant increase in cooperative marketing over the periods of years which probably began with definiteness and certainty about the year of 1921. In the arbitration award which I have identified, occurred this statement: "A very large per cent of the shipments of livestock at the four markets is owned by two or more persons, frequently the owners numbering as high as fif- [fol. 1594] teen and twenty to the car." I would say the cooperative shipping began having some orderliness and substance about it, and it began to spread more generally into the livestock, the general livestock area along about 1920. That is just a matter of recollection. I wouldn't state it as a definite fact. I would say there was a greater number of owners represented per car than a few years previously. It is just a matter of observation in communities in which I have acted. I do not have the figures; I am simply observing from the territory that I have operated in. To make a comparison between conditions as of the time of the arbitration award and of the conditions as of today with regard to multiplicity of ownership and observing for the territory with which I am familiar, the multiplicity of ownership represented per car has increased materially.

The territory with which I am familiar in the sense of contact, is western Pennsylvania, Ohio, and West Virginia, and part of Virginia and Maryland. My general informa-

tion, of course, I have kept actively in touch with such publications as come out of the market centers, and with the journals of the cooperative associations and the reviews of the Department of Agriculture.

[fol. 1595] In the arbitration award, page 9, occurs the statement that in the question of rates the compensation should be reasonably remunerative to those efficiently functioning as market agencies. We considered the question of rates from the standpoint of the shipper. There is no inconsistency between the statement that we considered it from the standpoint of the shipper and the language of the arbitration. From the standpoint of the shipper, of course, in relationship to his agency, the two happen to be together in a case of that kind. We attempted to be fair in relationship to all of the factors that should be properly considered in the marketing of livestock. I spent many weeks at the Chicago yards. I do not recall how much time was consumed in witnesses appearing and testifying at the Chicago yards.

We were not selected because of our going into a yard and interviewing people, not just simply, merely as an examiner of witnesses, we were thought to be more than that. We were thought to have the logic of the business and could apply what people said to us in keeping with the logic that must necessarily be pursued in differentiating between conflicting statements, and exaggerated statements and true [fol. 1596] statements, and all of that. At the time we were interviewing witnesses there were estimates made as to how much a salesman could sell in the course of a year or an estimate as to what would be a fair performance in the course of a year. But marketing livestock isn't the case of going in and pricing, and opening a gate and weighing it; that is only the mechanics of it. The amount of livestock that a man may sell—I have had this experience in markets, that I have spent all day trying to sell one old balogna cow because the right buyer didn't come along. I have lately priced my own cattle and the buyer will say, "I will buy the cattle and take off a dime"; maybe the next load I can show to twenty-five buyers, and maybe the conditions now that applied to a parallel shipment six months later might be entirely reversed. If a man needs a load, say of 1000-pound steer cattle of a certain finish, if he needs them and has an outlet, maybe he has an order for them, a letter for them, he is a better buyer than if you have to persuade

him to buy. So all those things enter in. And so today I say a man may be a good salesman of a certain type of livestock and, switch him over to another division of the same species, and then he is lost. There are many other things that enter into the handling of livestock and they can't be reduced to figures. You must exercise judgment I think to give weight to all of the factors that enter into the sale of livestock.

[fol. 1597] Between buyer and seller there is an entirely different degree of position. The buyer who refuses to buy hasn't anything to worry about, that is, except that he might have overlooked a good buy or he had an order for that type and failed to buy and all that, but the worry of possession or having made a bad trade, or finding an outlet is not on his shoulders at that time, but the man who has that livestock too far removed from its home to be returned and it must be sold within a few hours or become what we call "stale stock" and with increased expenses to the shipper, yardage, water, feed—he is not in as secure a position as the buyer who refuses to buy because one must act within definite limitations as to time, both with respect to the condition, or quality, or acceptability of the animal, as well as the expenses. The other man does not have to worry about what he does not buy.

It is my view that the buyer more nearly fixes the market than the seller.

Q. Now, Governor, you have mentioned the quality of service rendered by the market agency as being a factor in making rates, is that correct?

A. That is right.

Q. Can you tell me how you would evaluate quality of the service rendered and what part of this commission rate you would build up on that one fact alone?

[fol. 1598] A. Judge, you asked me a difficult question to phrase. I mean you asked me a question to answer which is difficult to phrase. Those things you have to pass on, you might say, as a common sense value, I mean as a common sense appraisal which you might put upon it.

. . . . . .

Mr. Miles (continuing): Governor, in your opinion it would be impossible to evaluate the services rendered by

market agencies from the standpoint of pure mathematics, is that correct?

A. No, sir.

Q. You believe that it could be evaluated then from the standpoint of mathematics?

A. If you will take all the factors into consideration. You must, in all matters, use many factors in making up your judgment.

Q. All right now, in your opinion is there any set rule or mathematical formula which could be used in fixing the value of services handled by the market agency?

A. That would be an important factor in making up that judgment.

Q. All right now, can you tell us exactly what figures you would have in mind, what function you would use, in fixing a rate schedule?

A. You take in a lot of territory on the question Judge. I am very glad to answer it.

Q. I wish you would.

A. In the first place of course the time factor and finances that enter into it, and the various services of various kinds and character, all those factors that play in on the performance of the service including the time element, the risk and responsibility, the time required for training, just like [fol. 1599] training you for the law. All those things would enter in materially, but what you do, would take, what you would do you would take your figures, what are the reasonable number of loads a person might sell under reasonably fair conditions, what are the expenses incidental to that, what is the stationery cost, and all the charges and all those factors that would enter in they build up your bases on which you would then begin to evaluate the services; then, what would be a reasonably fair compensation for that kind and quality of service as compared with that service say on the buying side. It is a known fact that seldom the buyer and seller meet as agencies that the buyer does not receive a larger compensation, the buyer receives the larger compensation at the stockyards than the seller. Now, then, as long as you are reasonably within line with what is paid or would be accepted as the fair compensation by a person under these circumstances, but say one of the great packers would be there buying, as long as you are not above him or substantially below him in the field occupied by him to the seller, you would certainly at least begin to tend toward

fairness to the little fellow. The actual facts are that the buyer, as a general proposition is a more highly paid person than the selling agency. Those things are a matter of record.

Q. Now Governor, you have told us that you would take certain factors and you would try to evaluate those factors and then you total them?

A. Yes, in other words, you take all of the known costs and the reasonable physical application of the services to the time element that would be used in marketing. There are times that such service would be available. In other words, on Saturday afternoon the best salesman is incapacitated because that is an inactive period. In other words you would take and give value to the known things about you could measure accurately by time, and such other [fol. 1600] things as would enter into it. Then you begin to think about the value of the commodity and what would be fair for this sort of a service in keeping with the value of the commodity for the seller to pay, what would be fair to him. Now all those things would enter in.

Q. Well now, Governor, having taken the various factors which you have mentioned, is there any other method known to you by which you would establish a commission rate?

A. Well now then you take—you want I suppose a yes or no, but I would prefer not to answer it that way. You take the known factors that may be determined and apply common sense and you use common sense in the interpretation of that service and those facts enter into a practical reality to a wide-flung industry that has varying shades of color wherever you lead it.

Q. Well now, what rate did you fix or what cost did you find to be the cost of selling cattle in the Chicago yards?

A. As near as we could interpret it, I think all the facts and figures the record shows.

Q. The record shows a total commission rate for everything done by the commission firm but does not show a breakdown on that total and does not show how much you allow for the single item of salesmanship.

A. We were asked to fix a fair compensation in doing all things necessary in marketing livestock under the practices then in vogue.

Q. And you did not then find the cost of salesmanship or cost of selling?

A. We certainly did.

Q. Well do you remember what that cost was?

A. We certainly covered it as a matter of judgment, taking into consideration all of these factors. Now to say we set up so much to be paid a man for opening gates or driving livestock down to the scales, that was an impossibility.

[fol. 1601] Q. And you did not do it?

A. We tried to find a practical basis to apply to the individual firms that were covered.

Q. But let me put it this way; that you actually did not set up various items?

A. Sir?

Q. You did not set up various items, like selling, yarding, office work, management and so forth?

A. We certainly did in our minds, in our judgment, in our own way in determining the facts.

Q. You did not set it up in the arbitration award?

A. It wasn't necessary.

Q. Granted.

A. We weren't asked to do that. We were asked to give a fair rate. You asked me if we set it up ad seriatim. Just as I illustrated we didn't do that but we did take into consideration all of the facts and costs that entered into all of those items before we could arrive at a figure that we thought was fair.

Q. Now with reference to salesmanship, you reached what you may call a fair salary without deciding what that fair salary is what you had in your own mind?

A. That is what the composite salary factor should be and that was the proposition that we argued and considered.

Q. Now to what selling capacity did you apply that salary?

[fol. 1602] A. Well I don't recall the exact figures. I do recall that we tried to apply it to the reasonable amount of service that a person might perform in their given field under the average circumstances which in livestock selling varies from time to time.

Q. And that was not limited to actual selling?

A. No, sir.

Q. That is what you believed a person should or could perform?

A. What?

Q. That is what you believed a person should or could perform?

A. In other words, judge, if here was a firm had a cattle salesman employed at $5000 a year, and he only sold three or four cars a week, why, he went out—why use that exaggerated figure? We didn't take that into consideration, we tried to take into consideration what would be a reasonable amount of service performed, just as today I finish the day's work, I am tired. I have done a day's work, that is just the only way of putting it.

You ask if we did take into consideration the time of yardage, did we follow it out and try to arrive at a practical figure, what cost of yardage was,—determined upon the performance—the figure was 17, what appears to be a figure 17 for a load of cattle. We took into consideration the matter of office salaries and went thoroughly into all [fol. 1603] records that were available and give every person who felt an interest and had an interest, whether that be a producer or market agency or otherwise, from the facts and figures that we were able to take from the records through our own agency, the Department of Agriculture, and all that we did—we took into consideration the weight of such expenses as derived by fact and matter of record on that, in trying to arrive at a base on which we would make an award. We went into administrative and general expense, business-getting. We did not take an average of the expenses of the various firms. We only took into consideration those firms that seemed to be functioning healthfully.

In the award, we had in mind the development of the services as the facts indicated, price relationship and service costs and all, and when we finally reached a conclusion we felt, as I recall it, that the service charges on the Chicago market could be performed for lower cost than at the time we were chosen as arbitrators, and that one of the factors that entered into it was value of livestock which had suddenly precipitated from war-time prices down to much lower prices, and with all of those factors bearing in

mind, we lowered commission rates in the stockyards in Chicago.

[fol. 1604] Mr. Miles: Let us assume that a firm received four cars a week only, that is, 208 cars per year, in your judgment should the commission rate be such as to keep that firm in business?

* * * * * * *

The Witness: The thought is this, now you are going to determine this proposition, you go into a yard, let us take one example, one firm may sell so many lots and another firm may sell different, either more or less, you take all your factors into consideration and see about what would be the extreme in a large volume and in a low volume. You try to get at what would be a practical average, what would be a practical average. Now, then, if it would appear that 4 loads a week are too few, that wouldn't be taken into consideration, or if we go into one of the larger firms they do what you might call an extensive and extended business, and highly financed, and highly organized, and all that. I would eliminate them to a certain extent. You keep them in mind but you try to get out of the conditions that surround that market what would be a fair volume of livestock. Then, the person who handles too few would have to accept less remuneration because he only had 4 as the basis of a fair and reasonable determination. Does that answer the question yet?

Mr. Miles (continuing): Practically. Let me put a specific question, Governor: Now, the record shows that one firm—I am not now dealing with salaries—but the firm received but 37 carloads of cattle in one year. Do you think that a rate should be high enough to enable that firm to remain on the yard?

A. You mean depending on the income from the 37 loads of cattle?

Q. Yes, sir.

A. I would not.

Mr. Miles: I think that is all, sir.

[fol. 1605] Redirect examination:

I would accept the actual performance of the average salesman in the Chicago market, as evidence of a sufficient

performance to justify the making of a rate. That is determined by the amount of time, and the industry, and pursuit, and the person, the service, of the reasonable amount of service purported in the employment at the time of that award, my answer would be that the average person would perform a reasonable service that might be considered as the unit of service.

Q. Now, Mr. Gore, you are personally acquainted with many of the prominent salesmen, or many of the salesmen on the Chicago market?

A. Yes

Q. And have been for years?

A. Yes.

Q. I will give you an illustration: let us take Emil Ingwersen, with whom you have been acquainted over a long number of years. You know his general reputation for selling livestock and you know his ability?

A. Yes.

Q. You also know Emmett Fulkerson?

A. Yes.

Q. In the case of those two firms the average cattle sales in the case of the National exceeded 1000 cars per salesman. In the case of the Ingwersen firm, it was less than 300. Do you believe that you should give any consideration to the talents of Emil Ingwersen and the amount of work that he may put on a market, or do you think that you should accept an average so high that no other firm could attain it?

[fol. 1606] A. The situation would be this. At first you would examine to see if Mr. Ingwersen's activities were a reasonable amount of work performed. Of course you would take into consideration in the case of the National, Fulkerson's concern, of course you have to give weight to that. Now you would attempt to find, in the case of Ingwersen "Did he perform a reasonable amount of service" and so forth, and if he did of course he was entitled to be taken into consideration. If upon the facts he did not—suppose they only come once a day and only stayed two hours, three hours, four hours, all of those factors would enter into whether he would be considered or not.

A carload of livestock does not represent to me a unit of work, nor a fair basis for arriving at the amount of

work. It may not be said with fairness that a man must sell a given number of cars of livestock in a given length of time. That is not a true yardstick at all.

The respondent rested.

[fol. 1607] In United States District Court

Order Settling Statement of Evidence

It appearing that notice of the lodgment of the within and foregoing Statement of Evidence has been waived by the appellees and that notice of the time of the proposed settlement thereof has been likewise waived;

And it further appearing that said Statement of Evidence is true, properly prepared, and contains all of the testimony material to the appeal, taken before the Secretary of Agriculture vs. C. H. Acker, etc." which testimony was introduced into this record as Petitioners' Exhibit No. 13;

And it further appearing that the portions of said Statement of Evidence appearing in the exact words of the witnesses is necessary in order that the sense and understanding thereof may be determined;

It is therefore ordered that said Statement of Evidence be settled, approved and allowed as a true, complete and correct statement of all of the evidence taken before the Secretary of Agriculture material to the h-aring of the appeal, and that the same be filed with the Clerk of this Court and become part of the record on appeal as a portion of Petitioners' Exhibit No. 13.

Dated at Chicago, Illinois, this 17th day of December, 1935.

Samuel Alschuler, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fol. 1608] Stipulation re Narrative Statement of Evidence

The parties hereto stipulate and agree that the foregoing Narrative Statement of Evidence is true, properly prepared, and contains all of the testimony material to the

appeal, taken before the Secretary of Agriculture in Secretary of Agriculture vs. C. H. Acker, etc. Bureau of Animal Industry, Docket No. 402, introduced in this record as Petitioners' Exhibit No. 13; and the defendant appellees waive notice of the lodgment thereof, and notice of the time of the proposed settlement thereof.

Geo. I. Haight, Counsel for Appellants. Wendell Berge, Counsel for Appellees.

[fol. 1609] COMPLAINANT EXHIBIT No. 45

Copy

March 30*1* 1933.

Mr. Charles Schultz, President, Chicago Livestock Exchange, U. S. Yards, Chicago.

DEAR MR. SCHULTZ:

We continue to receive almost daily, letters similar to those enclosed which demonstrate in our minds quite conclusively one of the main reasons why receipts at this m arket continue to show a steady decrease.

Three interests are principally involved, namely: The railroads with their high freight rates, the Union Stockyards and Transit Company with their high prices charged for feed and yardage, the stifling of yard trading with their charges for yard service and last but not least, the Chicago Livestock Exchange's rate of commission, which is causing so much complaint in the country.

For many years we have contended and still contend commission rates should be based on a percentage of the gross sale of live stock. Had that commission rate been established years ago, the commission merchant would have prospered when times were good, along with the farmer and then when prices went to a low level, his charges would have gone accordingly and we would have heard no complaint from the producer regarding them.

Would it be possible to get those three interests together with representatives from each to work on a plan of that kind?

We believe it would do more to help restore the much needed confidence in the Corn Belt, where the big end of our agricultural population resides, than all the Farm Relief measures that have been passed or proposed.

Do you think it worth consideration? If so, will be glad to discuss it further with you.

Yours truly, (Signed) Walters & Dunbar.

CAD*M.

[fol. 1610] COMPLAINANT EXHIBIT No. 61

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
Jan. 1	.....	...	...	...	155	...	3,393	.....
" 2	73	10	...	1	224	...	226	.....
" 3	.....	...	...	..	.....	...	.....	.....
" 4	1,233	5	40	5	1,281	4	3,820	.....
" 5	553	14	23	5	753	20	2,194	32
" 6	550	18	10	1	616	40	3,187	245
" 7	702	74	9	2	937	...	3,458	63
" 8	312	16	17	..	280	45	2,684	374
" 9	.....	...	...	..	283	...	.....	.....
" 10	.....	...	...	..	.....	...	.....	.....
" 11	662	54	23	5	914	47	6,888	1
" 12	180	57	32	2	152	37	2,383	.....
" 13	775	3	15	4	630	38	2,967	.....
" 14	302	3	...	1	564	107	5,235	.....
" 15	.....	...	...	..	455	...	1,849	.....
" 16	.....	...	...	..	.....	34	.....	.....
" 17	.....	...	...	..	.....	...	.....	.....
" 18	518	45	22	1	1,188	11	3,561	.....
" 19	171	13	...	4	287	11	3,166	.....
" 20	299	...	11	..	684	12	4,265	97
" 21	298	6	...	7	663	...	2,217	.....
" 22	70	...	...	..	528	22	1,332	.....
" 24	.....	...	...	..	.....	...	.....	.....
" 25	795	1	16	9	1,482	101	2,259	30
" 26	47	21	....	6	287	95	5,930	60
" 27	640	33	11	7	242	20	3,006	158
" 28	214	13	...	3	599	...	3,138	32
" 29	84	26	...	2	485	10	3,359	3
" 30	.....	...	...	..	528	...	349	.....
" 31	.....	...	...	..	.....	...	.....	.....
"** 23	.....	...	...	..	333	32	251	.....
Totals.....	8,478	412	229	65	14,550	686	71,117	1,095

**To be inserted under January 22.

[fol. 1611]

Feb. 1	703	16	19	1	278	..	2,341	123
" 2	364	18	38	1	279	45	1,678	40
" 3	290	67	15	..	408	49	1,684	86
" 4	118	13	23	2	296	...	3,410	299
" 5	.....	7	...	2	324	88	2,752	.....
" 6	.....	...	...	..	.....	...	230	.....
" 7	.....	...	...	..	.....	...	.....	.....
" 8	571	80	13	13	1,935	49	4,965	45
" 9	421	6	...	..	286	65	1,474	3
" 10	525	43	5	3	317	15	3,008	1

COMPLAINANT EXHIBIT No. 61—Continued

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
Feb. 11	341	1	1	4	469	48	4,558	.....
" 12	84	...	...	..	648	82	1,380	.....
" 13	.....	...	...	..	168	...	.....	.....
" 14	.....	...	...	..	.....	...	.....	.....
" 15	641	40	24	1	735	40	3,313	119
" 16	655	88	36	2	371	14	1,943	424
" 17	715	76	11	1	518	9	2,392	.....
" 18	517	21	11	6	618	143	3,302	316
" 19	60	...	11	2	306	17	1,279	.....
" 20	.....	...	...	..	115	...	.....	.....
" 21	.....	...	...	..	.....	...	.....	.....
" 22	911	1	25	..	819	...	2,575	32
" 23	322	64	7	14	28	13	2,195	18
" 24	442	29	9	3	692	13	1,902	147
" 25	429	9	3	3	560	28	2,419	.....
" 26	214	...	...	2	512	13	714	.....
" 27	.....	...	...	..	.....	...	.....	.....
" 29	959	34	59	9	314	136	2,986	.....
Totals.....	9,282	613	310	69	10,996	867	52,500	1,653
[fol. 1612]								
Mar. 1	381	2	21	7	430	1	1,394	.....
" 2	640	...	...	..	.....	48	2,146	.....
" 3	692	29	...	1	49	43	2,862	.....
" 4	99	38	3	..	264	...	1,406	.....
" 5	.....	...	...	..	147	...	.....	.....
" 6	.....	...	...	..	.....	...	.....	.....
" 7	694	43	10	1	453	148	1,932	.....
" 8	247	7	13	10	172	16	1,923	.....
" 9	742	31	...	..	974	25	1,153	191
" 10	489	84	10	3	302	72	1,537	108
" 11	134	9	...	13	428	66	461	.....
" 12	.....	...	...	..	80	...	.....	.....
" 13	.....	...	...	..	.....	...	.....	.....
" 14	870	37	49	15	1,123	11	1,827	1
" 15	141	10	11	4	247	43	1,149	100
" 16	669	3	...	1	136	44	3,485	50
" 17	240	20	...	3	325	17	1,324	203
" 18	57	3	...	..	377	12	993	.....
" 19	.....	...	...	..	.....	...	.....	.....
" 20	.....	...	...	..	.....	...	.....	.....
" 21	754	6	35	..	714	...	3,109	73
" 22	402	18	10	..	79	...	2,564	.....
" 23	1,187	39	6	..	146	...	2,681	.....
" 24	328	36	22	8	200	41	2,263	.....
" 25	61	...	...	..	643	...	1,173	.....
" 26	.....	...	...	..	.....	...	.....	.....
" 27	.....	...	...	..	.....	...	.....	.....
" 28	627	18	19	8	408	7	1,619	.....
" 29	311	21	1	..	170	26	1,618	.....
" 30	327	1	2	3	284	15	2,404	1
" 31	242	2	20	..	310	7	3,050	81
Totals.....	10,334	457	232	77	8,461	642	44,073	808

COMPLAINANT EXHIBIT No. 61—Continued

[fol. 1613]

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
April 1	219	2	...	..	128	30	.....	.....
" 2	.....	...	...	..	150	...	1,416	.....
" 3	.....	...	...	..	.....	...	.....	.....
" 4	509	39	60	..	1,054	9	4,460	91
" 5	238	69	14	2	487	4	1,423	.....
" 6	707	21	15	4	.....	2	1,746	79
" 7	335	33	...	2	213	18	5,142	55
" 8	164	32	...	1	315	8	2,718	.....
" 9	.....	...	...	..	.....	...	475	.....
" 10	.....	...	...	..	.....	...	.....	.....
" 11	1,356	62	9	..	872	25	3,645	107
" 12	465	40	12	15	265	5	3,984	.....
" 13	532	17	2	..	576	...	3,785	.....
" 14	235	11	...	..	486	...	3,704	.....
" 15	98	2	...	..	.....	3	1,772	.....
" 16	.....	...	...	..	.....	18	.....	.....
" 17	.....	...	...	..	.....	...	.....	.....
" 18	647	18	45	..	672	116	2,216	.....
" 19	212	25	22	1	330	40	1,918	52
" 20	575	55	23	1	86	2	4,723	.....
" 21	406	1	2	2	440	1	3,154	51
" 22	115	2	...	1	70	...	1,025	.....
" 23	.....	...	...	..	.....	...	.....	.....
" 24	.....	...	...	..	.....	...	.....	.....
" 25	682	4	17	1	448	56	3,754	156
" 26	402	44	16	..	287	91	3,814	10
" 27	700	34	6	4	345	35	2,141	.....
" 28	214	10	8	1	336	79	2,603	.....
" 29	.....	5	...	2	.....	53	455	.....
" 30	.....	...	...	..	142	...	.....	.....
Total.....	8,811	526	251	37	7,702	595	60,073	601

[fol. 1614]

May 1	.....	...	...	..	.....	.....	.....	.....
" 2	640	75	31	7	769	112	1,618	.....
" 3	334	13	2	..	29	85	4,323	118
" 4	754	23	4	3	553	39	3,882	10
" 5	403	23	...	..	431	102	2,784	.....
" 6	154	11	...	..	202	.....	486	.....
" 7	.....	...	...	..	111	.....	.....	.....
" 8	.....	...	...	..	.....	.....	.....	.....
" 9	1,462	24	13	2	1,553	101	1,654	.....
" 10	399	30	61	..	1,153	69	2,771	.....
" 11	452	73	...	2	255	54	1,774	.....
" 12	55	10	...	..	267	.....	2,266	.....
" 13	.....	2	...	1	439	142	1,007	.....
" 14	.....	...	...	..	.....	.....	.....	.....
" 15	.....	...	...	..	.....	.....	.....	.....
" 16	513	44	23	1	433	70	1,479	.....
" 17	507	82	...	3	558	24	1,748	.....
" 18	666	146	4	..	504	73	2,096	29
" 19	212	4	...	1	88	150	962	1
" 20	51	3	...	2	202	61	121	.....
" 21	66	1	...	..	263	.....	.....	.....
" 22	.....	...	...	..	.....	.....	.....	.....
" 23	1,052	100	17	2	486	32	1,237	.....
" 24	474	6	...	..	109	106	2,447	.....
" 25	425	5	...	..	539	158	877	.....

COMPLAINANT EXHIBIT No. 61—Continued

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
May 26	166	28	...	5	372	26	2,362	.....
" 27	48	7	...	..	97	27	1,292	.....
" 28	.....	...	...	..	.....	.....	280	.....
" 29	.....	...	...	..	.....	.....	.....	.....
" 30	.....	...	...	..	.....	.....	.....	.....
" 31	587	59	10	2	784	4	1,426	.....
Total.....	9,420	769	165	31	10,144	1,435	38,892	158
[fol. 1615]								
June 1	832	26	6	..	74	37	1,925	7
" 2	300	35	...	..	414	24	1,740	134
" 3	47	1	2	..	476	32	1,777	.....
" 4	.....	...	...	..	271	...	1,048	.....
" 5	.....	...	...	..	.....	...	.....	.....
" 6	1,009	70	12	6	659	27	1,513	12
" 7	244	66	66	3	37	110	668	29
" 8	898	14	11	5	284	33	694	102
" 9	479	59	6	2	298	88	154	.....
" 10	32	...	...	1	.....	21	.....	.....
" 11	.....	...	...	..	105	...	.....	.....
" 12	.....	...	...	..	.....	...	.....	.....
" 13	689	82	26	4	270	39	527	.....
" 14	402	62	33	11	576	67	260	.....
" 15	738	63	6	1	637	15	552	2
" 16	176	41	4	5	183	18	.....	136
" 17	37	8	3	3	371	19	.....	.....
" 18	36	...	...	..	.....	...	.....	.....
" 19	.....	...	...	..	.....	...	.....	.....
" 20	608	24	9	10	547	81	452	.....
" 21	291	1	...	5	202	160	604	51
" 22	556	48	1	7	327	13	369	14
" 23	252	72	2	8	565	14	167	1
" 24	28	12	...	2	175	5	.....	.....
" 25	.....	...	...	..	.....	...	.....	.....
" 26	.....	...	...	..	.....	...	.....	.....
" 27	435	74	3	..	255	19	292	.....
" 28	269	72	57	4	372	57	721	159
" 29	320	71	...	4	150	30	480	242
" 30	179	31	...	..	410	...	.....	22
Total.....	8,857	932	247	81	7,658	909	13,943	911
[fol. 1616]								
July 1	54	4	22	4	170	194	.....	13
" 2	.....	...	...	..	198	.....	.....	.....
" 3	.....	...	...	..	.....	.....	.....	.....
" 4	.....	...	...	..	.....	.....	.....	.....
" 5	1,038	16	26	6	415	28	398	.....
" 6	912	32	14	..	222	31	.....	5
" 7	535	78	14	7	157	61	1,433	16
" 8	.....	...	...	..	572	47	220	2
" 9	.....	...	...	..	84	.....	.....	.....
" 10	.....	...	...	..	.....	.....	.....	.....
" 11	1,259	58	8	2	369	55	2,323	13
" 12	471	47	...	7	311	66	1,247	57
" 13	607	5	41	..	209	69	1,679	.....
" 14	469	6	...	4	252	51	1,319	.....
" 15	94	...	...	..	338	.....	1,035	.....
" 16	25	...	...	..	.....	.....	.....	.....

COMPLAINANT EXHIBIT No. 61—Continued

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
July 17	.....	...	...	..	.....	.....	.....	.....
" 18	1,793	22	16	..	776	109	1,607	.....
" 19	708	110	28	4	401	41	2,592	8
" 20	612	51	...	..	327	20	397	.....
" 21	286	87	45	..	109	38	1,789	.....
" 22	32	10	...	5	386	.....	1,402	16
" 23	.....	...	...	..	82	.....	.....	.....
" 24	.....	...	...	..	.....	.....	.....	.....
" 25	553	58	..	1	549	37	.....	12
" 26	671	62	12	..	186	56	160	63
" 27	427	14	6	7	210	76	528	52
" 28	250	21	1	5	92	60	597	33
" 29	100	5	...	7	98	8	294	32
" 30	25	...	...	..	.....	.....	.....	.....
" 31	.....	...	...	..	.....	.....	.....	.....
Total.....	10,927	686	233	59	6,513	1,047	19,020	322

[fol. 1617]

Aug. 1	1,543	14	24	..	501	46	462	45
" 2	305	...	12	..	118	30	771	116
" 3	422	47	...	..	485	10	320	16
" 4	219	17	24	7	145	98	510	.....
" 5	.....	4	...	1	259	1	.....	42
" 6	26	...	...	..	.....	.....	.....	.....
" 7	.....	...	...	..	.....	.....	.....	.....
" 8	993	44	...	6	287	72	1,888	41
" 9	174	46	5	8	772	27	375	34
" 10	462	20	9	2	550	57	1,633	35
" 11	117	43	5	..	72	174	1,666	51
" 12	315	10	...	..	.....	.....	.....	35
" 13	.....	...	...	..	100	.....	.....	.....
" 14	.....	...	...	..	.....	.....	.....	.....
" 15	664	70	56	1	719	40	989	.....
" 16	424	22	16	2	578	132	1,013	43
" 17	874	44	1	1	442	40	541	90
" 18	372	3	20	3	283	49	3,022	71
" 19	29	...	...	..	316	10	260	17
" 20	.....	...	...	..	.....	.....	.....	.....
" 21	.....	...	...	..	.....	.....	.....	.....
" 22	902	19	16	12	342	63	4,509	.....
" 23	166	12	7	26	208	5	518	109
" 24	360	54	21	6	303	109	1,122	60
" 25	283	19	1	2	107	16	3,296	34
" 26	154	5	52	..	235	113	974	.....
" 27	40	9	...	..	.....	.....	.....	.....
" 28	.....	...	...	..	.....	.....	.....	.....
" 29	950	7	74	11	1,367	130	322	51
" 30	414	57	...	6	337	86	1,415	56
" 31	914	257	2	2	290	39	384	114
Total.....	11,122	823	345	96	8,816	1,347	25,990	1,060

COMPLAINANT EXHIBIT No. 61—Continued

[fol. 1618]

1932		Cattle		Calves		Hogs		Sheep	
		Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
Sept.	1	172	15	...	...	195	19	667	.....
"	2	119	3	1	5	420	42	508	.....
"	3	.....	10	...	6	.....	.....	.....	.....
"	4	.....	...	...	...	.....	.....	.....	.....
"	5	.....	...	...	...	.....	.....	.....	.....
"	6	595	44	96	3	325	22	3,440	49
"	7	606	15	14	2	312	19	1,272	41
"	8	351	44	...	3	418	147	119	149
"	9	135	3	6	3	102	49	308	5
"	10	.....	1	...	1	.....	13	.....	75
"	11	.....	...	...	...	.....	.....	.....	.....
"	12	1,231	53	22	3	1,434	54	671	91
"	13	212	23	41	3	293	54	128	75
"	14	472	54	3	18	329	13	1,496	.....
"	15	573	57	31	7	298	50	3,142	44
"	16	209	4	8	5	198	55	3,550	101
"	17	.....	...	...	1	.....	42	.....	.....
"	18	.....	...	...	...	.....	.....	.....	.....
"	19	1,128	10	79	10	388	146	3,032	103
"	20	220	27	...	3	.....	180	1,653	91
"	21	767	82	64	11	469	27	1,851	59
"	22	540	20	...	8	274	29	2,038	94
"	23	85	1	...	...	222	23	1,806	.....
"	24	62	...	...	...	.....	9	.....	.....
"	25	.....	...	...	...	.....	.....	.....	.....
"	26	808	74	21	16	447	162	3,844	76
"	27	223	72	37	2	273	116	2,273	25
"	28	575	10	4	2	286	41	75	63
"	29	257	41	16	...	74	24	222	.....
"	30	53	9	...	20	.....	58	.....	7
Total.....		9,393	672	470	132	6,757	1,394	32,095	1,148

[fol. 1619]

Oct.	1	19	...	...	...	.....	.....	.....	.....
"	2	.....	...	...	...	.....	.....	.....	.....
"	3	1,041	19	17	7	279	23	2,467	105
"	4	446	81	33	4	36	34	1,588	.....
"	5	381	21	3	2	363	89	1,198	11
"	6	128	36	...	...	97	75	1,055	15
"	7	58	4	...	13	154	99	270	45
"	8	.....	...	...	...	.....	.....	.....	.....
"	9	.....	...	...	...	.....	.....	.....	.....
"	10	1,057	14	...	4	267	160	3,718	14
"	11	424	106	30	6	76	35	1,591	.....
"	12	463	30	8	3	416	39	1,488	214
"	13	538	11	12	5	456	131	183	86
"	14	24	...	...	...	441	20	920	73
"	15	.....	...	...	...	.....	.....	.....	.....
"	16	.....	...	...	...	.....	.....	.....	.....
"	17	1,108	91	224	5	613	163	3,373	.....
"	18	333	17	98	6	466	26	3,610	32
"	19	515	34	15	7	624	107	2,795	92
"	20	364	33	312	6	341	6	158	47
"	21	69	4	5	2	149	103	1,098	2
"	22	42	...	...	...	.....	.....	1,265	.....
"	23	.....	...	...	...	.....	.....	.....	.....
"	24	1,700	11	18	3	197	128	2,090	.....

COMPLAINANT EXHIBIT No. 61—Continued

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truke
Oct. 25	259	11	7	6	104	71	3,087	68
" 26	958	107	3	...	339	56	3,091	5
" 27	422	143	9	3	183	215	942	151
" 28	201	...	8	...	138	64	1,000	66
" 29	.....	...	...	...	.....	.....	.....	.....
" 30	.....	...	...	...	.....	.....	.....	.....
" 31	1,114	78	33	5	121	157	5,020	62
Total.....	11,664	851	835	87	5,860	1,801	42,007	1,088
[fol. 1620]								
Nov. 1	344	27	90	19	369	38	2,047	14
" 2	1,004	20	...	34	121	111	2,387	24
" 3	567	11	3	...	288	104	1,812	.....
" 4	223	15	1	3	250	82	1,350	.....
" 5	.....	...	...	...	.....	7	.....	.....
" 6	.....	...	...	...	.....	.....	.....	.....
" 7	924	85	30	...	524	70	3,347	18
" 8	365	7	6	...	158	55	1,157	.....
" 9	492	84	1	...	10	143	1,311	.....
" 10	531	15	...	3	138	78	1,787	.....
" 11	39	5	...	4	743	5	2,684	.....
" 12	.....	...	...	...	78	41	352	.....
" 13	.....	...	...	...	.....	.....	.....	.....
" 14	1,085	99	18	4	530	67	2,383	33
" 15	223	37	29	11	204	57	2,264	4
" 16	1,193	28	5	2	312	155	1,637	.....
" 17	420	9	3	6	451	95	1,328	20
" 18	80	...	3	...	571	.....	600	58
" 19	44	...	...	...	.....	.....	.....	.....
" 20	.....	...	...	...	.....	.....	.....	.....
" 21	1,078	21	20	...	533	.....	3,678	5
" 22	830	44	46	2	197	61	2,580	.....
" 23	953	1	178	...	140	12	2,255	364
" 24	.....	...	...	...	.....	.....	.....	.....
" 25	296	9	57	...	161	33	1,642	285
" 26	27	1	...	...	.....	.....	100	.....
" 27	.....	...	...	...	.....	.....	.....	.....
" 28	491	23	42	3	149	76	2,212	.....
" 29	494	57	29	3	149	25	2,070	64
" 30	568	17	3	2	193	192	2,152	133
Total.....	12,271	615	563	96	6,269	1,507	43,135	1,022
[fol. 1621]								
Dec. 1	565	12	5	...	136	73	1,454	.....
" 2	180	4	...	...	118	.....	598	120
" 3	137	...	1	...	.....	.....	1,942	102
" 4	.....	...	...	...	.....	.....	.....	.....
" 5	1,086	5	51	...	314	40	2,022	.....
" 6	227	109	27	11	399	129	1,997	58
" 7	824	15	3	1	141	115	2,587	.....
" 8	465	34	7	3	97	13	1,462	383
" 9	199	11	...	...	768	36	2,486	635
" 10	.....	...	...	...	.....	.....	1,892	.....
" 11	.....	...	...	...	.....	.....	.....	.....
" 12	1,786	53	11	...	402	94	3,357	258
" 13	306	...	...	...	66	68	3,818	412
" 14	731	40	2	9	.....	100	1,683	65
" 15	478	1	...	1	71	50	828	33

COMPLAINANT EXHIBIT No. 61—Continued

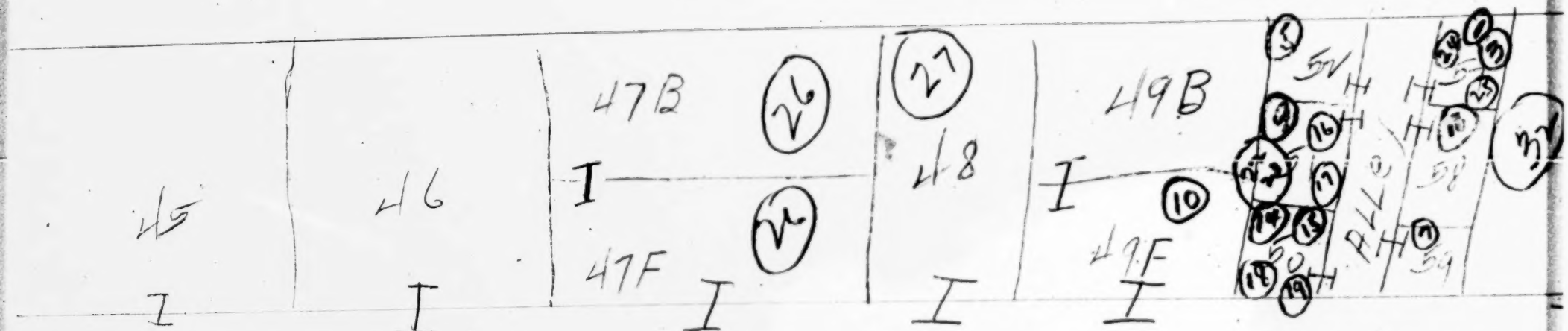
1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
Dec. 16	296	6	...	...	248	.....	254	.....
" 17	.....	...	...	...	.....	.....	460	.....
" 18	.....	...	...	...	.....	.....	.....	.....
" 19	474	56	1	3	447	87	2,891	271
" 20	219	25	9	17	122	36	3,734	259
" 21	348	61	7	...	337	43	1,923	23
" 22	191	26	42	...	431	29	2,014	121
" 23	55	3	...	4	214	.....	538	392
" 24	.....	...	...	....	147	.....	1,703	.....
" 25	.....	...	...	...	.....	.....	.....	.....
" 26	672	...	6	1	616	25	2,752	50
" 27	221	6	...	1	438	203	1,753	869
" 28	534	29	...	...	288	89	2,592	28
" 29	158	14	9	4	.....	.....	957	2
" 30	103	1	2	6	197	30	696	....
" 31	.....	...	...	...	.....	.....	1,193	.....
Totals	10,255	511	183	61	5,997	1,260	49,586	4,081

(Here follows 1 photo, folio 1622.)

NORTH

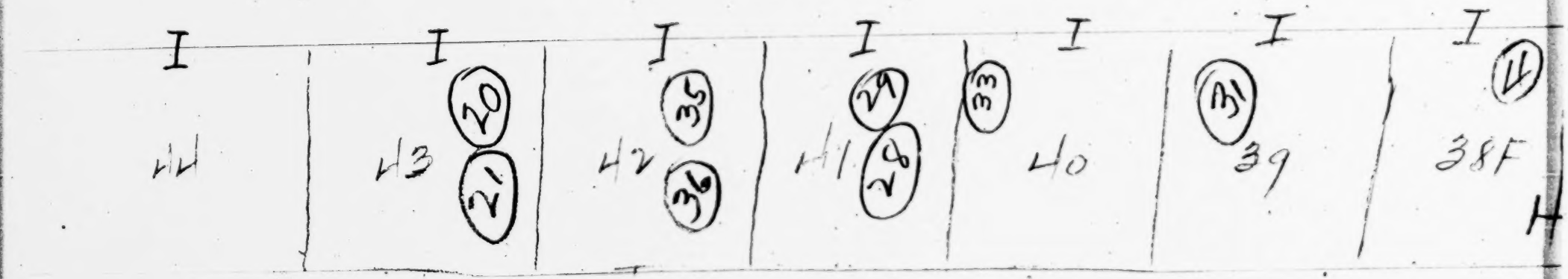
Respondent Exhibit No. 7

RECEIVED



West

CATTLE ALLEY



EXCHANGE AVE (SOUTH)

NORTH

13-C

Respondent Exhibit No. 7

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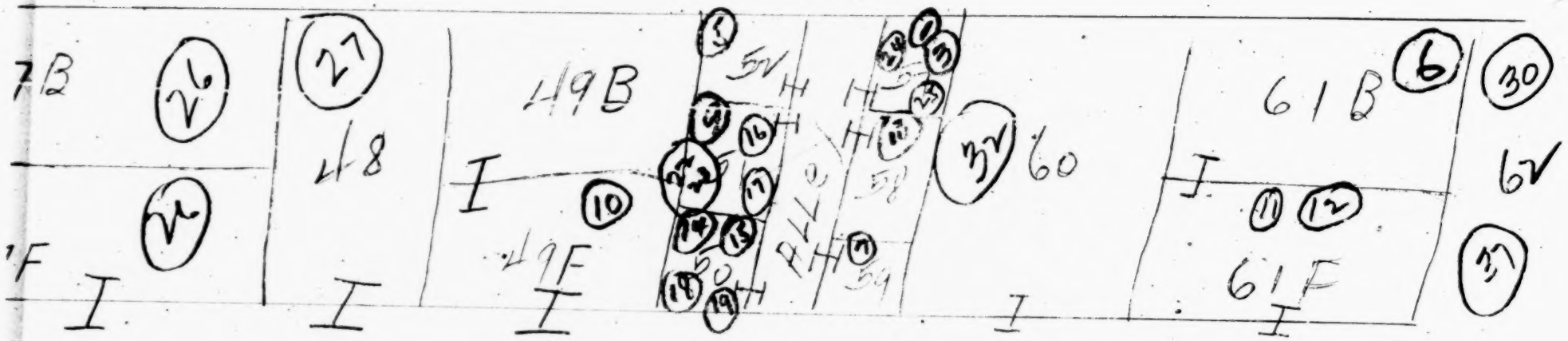
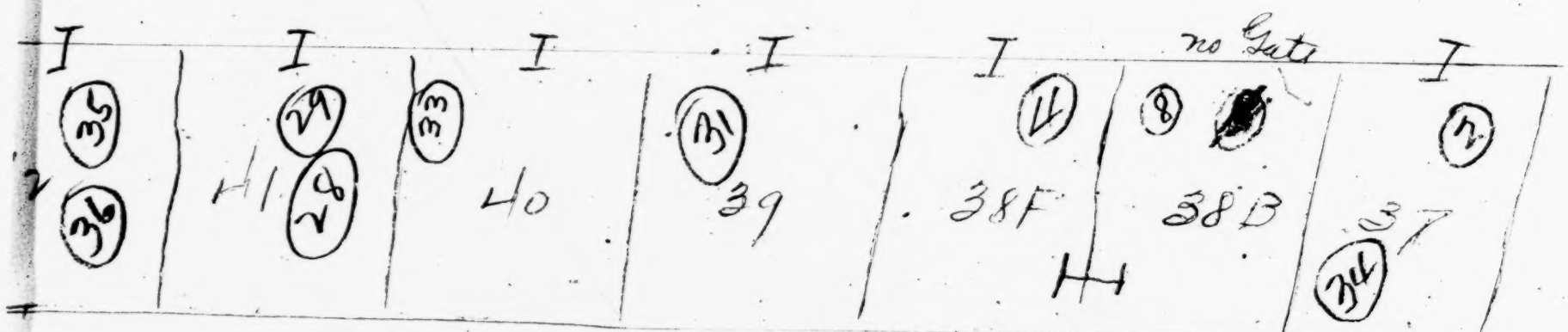


CATTLE ALLEY

EAST



[fols. 1623 & 1624] IN UNITED STATES DISTRICT COURT

[Title omitted]

Findings of Fact and Conclusions of Law—Dec. 31, 1934

FINDINGS OF FACT

The Court makes findings of fact as follows:

1. The orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, prescribing rates, charges and practices for plaintiffs as market agencies at the Union Stock Yards, Chicago, Illinois, were made after full hearings accorded the plaintiffs, and each of them, and upon findings of fact made by the Secretary based upon the evidence taken at the hearings;

2. The findings of fact made by the Secretary of Agriculture, upon which the orders aforesaid of the Secretary are based, are supported by substantial evidence;

3. Upon an independent consideration of the evidence received by the Secretary of Agriculture, the Court adopts, as its findings of fact, the findings of fact made by the Secretary and by this reference incorporates them therein; and,

4. Upon an independent consideration of the evidence received by the Secretary of Agriculture and that received by this Court, the Court adopts, as its findings of fact, the findings of fact made by the Secretary and by this reference incorporates them herein.

[fols. 1625 & 1626] CONCLUSIONS OF LAW

The Court concludes as matters of law as follows:

1. The orders of the Secretary of Agriculture, dated January 8, 1934, and March 12, 1934, prescribing rates, charges and practices for plaintiffs as market agencies at the Union Stock Yards, Chicago, Illinois, were made by the Secretary after a full hearing in all respects conforming to the requirements of the Packers and Stockyards Act, 1921;

2. The orders aforesaid are fully supported by the findings of fact made by the Secretary and those findings are

based on substantial evidence and are supported by the weight of the evidence and are not based upon any erroneous rules of law; and,

3. The rates, charges and practices prescribed by the Secretary in the orders aforesaid are reasonable and not arbitrary, and do not take the property of plaintiffs, or any of them, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

Dated at Chicago, Illinois, this 31 day of December, 1934.
(Signed) Samuel Alschuler, United States Circuit Judge. —— ——, United States District Judge.
(Signed) John P. Barnes, United States District Judge.

[fol. 1627] In United States District Court for the Northern District of Illinois, Eastern Division

In Equity. No. 13,829

C. H. Acker, Doing Business as C. H. Acker & Company, et al.,

vs.

United States of America, et al.

Before Alschuler, Circuit Judge, and Wilkerson and Barnes, District Judges

Opinion—Feb. 1, 1935

Barnes, District Judge:

This is a suit by one-hundred fifty-seven persons, partnerships and corporations who are registered and doing business under the Packers and Stockyards Act, 1921 (U. S. C. A. Title 7, Chap. 9) as market agencies engaged in the buying and selling in commerce of live stock on a commission basis at the Union Stock Yards, Chicago, Illinois, against the United States, Henry A. Wallace, Secretary of Agriculture, Homer S. Cummings, Attorney General, and Dwight H. Green, United States District Attorney for the Northern District of Illinois, to restrain the execution and

enforcement of an order of the Secretary of Agriculture of January 8, 1934, and a supplemental order of the Secretary dated March 12, 1934.

Since 1865, there has existed in Chicago stockyards, commonly known as Chicago Union Stock Yards, to which producers and shippers of live stock send cattle, hogs, sheep, goats, mules and horses for sale. It is the primary market for the chief live stock producing sections of the United [fol. 1628] States. It is regarded by the live stock industry as the basic market for live stock in the United States, if not for the world. The prices prevailing at this market establish and affect the price of live stock throughout the United States and the world. Shippers to this market reside in and ship from 45 states of the Union.

After the enactment of the Packers and Stockyards Act, 1921, the Chicago Live Stock Exchange (a trade association whose members comprise commission merchants and other market agencies), and all market agencies, members thereof, including some or all of the plaintiffs, agreed with the then Secretary of Agriculture that, in lieu of the formal procedure and hearing provided for by said Act, the entire subject matter and charges in a certain complaint by American National Live Stock Association and others against the Chicago Live Stock Exchange and others might be investigated by two arbitrators, with full authority in said arbitrators finally to adjust and determine the issues raised in said complaint. It was further agreed that the rates and charges and practices found to be just and reasonable by said arbitrators and recommended by them would be adopted by the Chicago Live Stock Exchange and the members thereof upon approval by the Secretary of Agriculture. Pursuant to said arbitration agreement, and after hearing, a schedule of rates and charges and practices was prescribed by said arbitrators, approved by the then Secretary of Agriculture, and adopted by the Chicago Live Stock Exchange and the members thereof. Said schedule of rates, charges and practices, without substantial alteration, has been in effect since September 15, 1923, and the plaintiffs and others similarly situated have, since that date, adopted and followed and used the said schedule.

[fol. 1629] On September 23, 1932, the then Secretary of Agriculture entered an order of inquiry and notice of hearing against the plaintiffs and others wherein it was directed

that an inquiry be made for the purpose of determining the lawfulness of any and all rates and charges of the plaintiffs and of any rule, regulation or practice affecting the same, or the rendering of any stockyard service without making any charge therefor. A hearing was subsequently held beginning on May 15, 1933, before an examiner acting under and by the authority of the Secretary. Said hearing was finally adjourned on November 7, 1933. Oral argument was had on December 13, 1933, before the Secretary.

On January 8, 1934, the Secretary executed and issued his order which is by this action sought to be enjoined. By said order, a schedule of rates, charges and classifications was prescribed and it was ordered that they should become effective 30 days thereafter.

On February 7, 1934, the plaintiffs filed a petition for rehearing, which was denied on March 12, 1934. By the same order denying the petition for rehearing, the schedule of rates, charges and classifications of the order of January 8, 1934, was slightly modified. The extent to which the prescribed rates will reduce prior rates is in dispute. Plaintiffs contend that the prescribed rates, when applied to the four-months period ending April 30, 1934, will effect an average reduction in gross commissions of 20.68%. By orders entered from time to time, the Secretary postponed the effective date of the order of January 8, 1934, and the supplemental order issued March 12, 1934. The effective date lastly fixed was April 20, 1934.

On April 9, 1934, the plaintiffs and others filed an amended petition for rehearing, which was denied by the Secretary on April 12, 1934.

[fol. 1630] On April 18, 1934, the plaintiffs filed their bill of complaint in this cause, wherein they charged that the rates prescribed by the Secretary in his orders of January 8, 1934, and March 12, 1934, are unreasonable and arbitrary and are contrary to the evidence and without evidence upon which they may be based, that they were unreasonably and arbitrarily arrived at by guess and supposition rather than by any well known and well recognized statistical method, such as the modal method the bulk-line method, the weighted average method, or percentage deviations therefrom. The bill further charges the confiscation of property and the deprivation of business and property without due process of law.

On April 19, 1934, this court granted a preliminary injunction, restraining the enforcement of the prescribed rates. The injunction was conditioned upon plaintiffs depositing with the clerk of this court the full amount by which the charges collected under the schedule of rates in effect exceeds the amount which would have been collected for an equal period of time under the rates prescribed by orders of the Secretary of Agriculture. Subsequently, the case came on for final hearing before the court. At that time, the plaintiffs sought leave to introduce additional evidence on the subject of alleged confiscation. The right to introduce further evidence was contested by the defendants. The court permitted the testimony to be received subject to the objection in order that it might be before this court and the reviewing court, if deemed proper.

The Secretary caused to be made an investigation of the books and records of each of the market agencies doing business at the Chicago Union Stockyards. This investigation included an audit of the financial status of all firms for the years 1931 and 1932, an analysis of all income and expense, [fol. 1631] and an appraisal of all fixed assets owned by each firm. After an examination and analysis of the audits, the Secretary found reasonable per head costs and reasonable per head profits for selling each species of livestock and prescribed rates which include a substantial margin above such reasonable costs and profits.

Complaint is made that the Secretary did not use some other statistical method in determining the rates to be prescribed, such as the median method, involving the selecting the unit cost of the firm above which there are as many firms with higher costs as there are below with lower costs, the bulk-line method, involving eliminating a certain percentage of firms from consideration, the market average method, or percentage deviations from said methods. No particular method is prescribed by constitution or statute. The use of any one of these methods would have involved the exercise of judgment by the rate maker on one occasion, and sometimes more—always when he chose the method and sometimes when he used it. The judgment factor cannot be excluded. The statute does not contemplate it shall be. A reasonable rate schedule is the result of the application of judgment by the rate maker to the pertinent facts. The Secretary chose to apply his judgment to the pertinent facts

according to the method shown by the evidence and above recited. That method was open to him under the statute.

It is said that the Secretary has usurped the powers of a manager in that he has fixed salesman's salaries and in that he has limited the amounts which may be spent for business getting and maintaining expenses. It is true, of course, that, subject to reasonable regulation in the public interest, the management and right to control the policy of a business affected with a public interest belong to its owners (Banton v. Belt Line Ry., 268 U. S. 413, 421), but that does [fol. 1632] not mean that the governmental agency charged with the fixing of reasonable rates may not consider and determine what are reasonable wages or salaries or other compensation for human effort to be covered into rates. If this power does not exist, the power to prescribe reasonable rates does not exist, and Congress has vested the latter power in the Secretary (Tagg Bros. & Moorhead v. United States, 280 U. S. 420, 438). In the case at bar, the Secretary has not by his orders sought directly to affect the management or business policy of the plaintiffs. They are free to pay for salesmen's salaries and for business getting and maintaining expenses such amount as to them seem wise. The Secretary has merely determined a reasonable per head salesmanship cost and business getting and maintaining expense to be covered into rates to be charged the rate payer. That was within the power vested in him to prescribe reasonable rates.

The plaintiffs had the value of owners' services appraised by a committee of five and offered the appraisals before the Secretary. The Secretary, however, did not accept the appraisals as binding on him, but took the amounts that the owners had set up as salaries or drawing accounts for themselves, or where no amounts had been set up, he classified net profits as compensation to the owners in lieu of salary. We think the Secretary was justified in this course. The amounts which he used in determining costs were the amounts which the owners actually received. The appraisal figures were what the committee thought the owners might receive if they bargained with others for their services. Furthermore, the Secretary, in fixing the rates, allowed something to cover management and something to cover uninsurable risks and called the two profit. He also allowed something for interest on investment. But, in addition to

the foregoing items, the Secretary allowed a substantial [fol. 1633] spread between the total of the reasonable costs and profits and the rates as prescribed. This difference, based on the business of 1932, approximates $500,000 for the market as a whole, or nearly 25% more than the total costs and profits found by the Secretary to be reasonable. It is unquestionably true that even under the old rates some of the commission men at Chicago experienced difficulty in earning a livelihood; but such a result will come about more or less under any rate, in any industry or occupation. There are always those whose entry into or continuance in a business cannot be justified save for the hope and expectation that their business will increase and they will become more prosperous. Of course the rate structure cannot be predicated alone upon the experience of those whose volume of business is very small. No more should it be predicated entirely upon the experience of those who are in the enjoyment of a very large business. All must be considered, and as nearly as possible a fair conclusion must be reached. It is possible that quite a number of the smallest dealers may not long survive the new rates; but probably numbers of them would not have survived under the old rate. When one enters such an occupation in the hope of eventually working up a successful business the volume of his transactions will for a time necessarily be small, and if success comes to him it will be because he has been able to hold on until the business reaches a volume that will afford him a livelihood. But proper rate regulation in a large industry charged with a public interest cannot, of course, be stayed because a few there are who would suffer from its application. We cannot say that the Secretary did not make an adequate allowance for the owner's function.

Complaint is made that the Secretary classified livestock into grades, depending upon weight, and prescribed his rates on a consignment basis rather than on a draft basis. [fol. 1634] A "draft" is all those animals in one consignment weighed as a single sales or purchase classification. A "consignment", on the other hand, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day. It appears from the record that, at the oral argument before the Secretary, the plaintiffs submitted a tariff prepared by them for adoption by the Secretary.

This proposed tariff was based upon the draft as the unit, with gradations in charges according to the number of head and the weight of the livestock in each draft. Both the tariff proposed by the plaintiffs and the one prescribed by the Secretary include the weight factor, of which plaintiffs now complain. The issue between a per head rate, based on the number of head in a consignment, and a per head rate, based upon the number of head in a draft, and the issue of few or many weight classifications, were clearly presented to the Secretary, and his conclusion was reached after a consideration of the relevant factors. This appears from the following language in the Secretary's order of January 8, 1934:

"There are features of their (plaintiffs') proposed tariff which would tend to overcome some of the obsolete aspects of the existing tariff. The extensive weight classifications would tend to complexity in application. Fewer weight classifications can be made, which will render a tariff simple in its application and at the same time preserve substantial equity among the different weight groups. From all the evidence, it is reasonable to conclude that the consignment, as hereinafter defined, more nearly represents the work-occasioning unit than does the weight draft. Additional weight drafts in a consignment occasion some additional work, and the tariff structure hereinafter prescribed makes provision to compensate for that extra work."

We have considered above in some detail those phases of the Secretary's action which are said to result in the rates [fol. 1635] and charges specified in the orders of the Secretary being unreasonable and arbitrary and contrary to the evidence and without evidence on which they may be based, and, upon such consideration, we arrive at the conclusion that these contentions of the plaintiffs are without foundation.

The plaintiffs contend that the denial by the Secretary of the two petitions for rehearing was arbitrary because such action precluded the plaintiffs from showing that the prescribed rates would be confiscatory. We cannot see why, in a rate case, the entity, whose rates are under investigation, should wait until after rates are prescribed before showing or attempting to show that the rates prescribed are confiscatory. The idea underlying such procedure is contrary to

the fundamental rule that causes of action or defenses should not be split up. We cannot agree that the action of the Secretary was arbitrary.

At the trial before this Court, the plaintiffs, in support of their contention that the maximum rates prescribed by the Secretary are confiscatory, offered evidence which, generally speaking, tends to show that past actual costs can not be maintained under the prescribed rates. The defendants objected to this evidence and it was received subject to the objection. This evidence, which was offered and received, does not estabish confiscation, since there is no showing, either in the record made before the Secretary or before this Court, as to the individual firms, that the volume of business received warrants taxing the rate payers for the overhead incurred. Hegeman Farms Corporation v. Baldwin (decided Nov. 5, 1934) 293 U. S. 163; Aetna Ins. Co. v. Hyde, 275 U. S. 440; Beaumont, S. L. & W. Ry. v. U. S., 282 U. S. 88. The plaintiffs have not sustained the burden of proof on the question of confiscation. Furthermore, the same may properly be said of the evidence offered in this [fols. 1636 & 1637] case as was said of evidence relating to property valuation and depreciation reserve in Union Stock Yards Company of Omaha v. United States, — Fed. Supp. —:

"The testimony offered for the plaintiff tends to defeat its probative force by going too far and proving too much. Plaintiff's testimony is to the effect that its properties are worth some $15,000,000 and its net operating income derived from the rates it had fixed for itself was some $850,000, so that on the showing it would appear to have been voluntarily operating at a rate far below what it asserts to be a confiscatory rate. Likewise, it contends that it must have a reserve for depreciation, maintenance and repairs far in excess of any reserve which it has ever set up on its own account. We think the testimony, by proving too much, over-shoots the mark and must fail of the intended effect."

Having considered the new evidence offered for the first time in this court, and all the evidence offered before the Secretary, and having concluded, as we have, that there is no showing of confiscation, we find it unnecessary to determine whether the evidence offered for the first time in this court was admissible. Tagg Bros. & Moorhead v. U. S., 280 U. S. 420.

We are, contemporaneously with the filing of this memorandum, filing findings of fact and conclusions of law.

Counsel may, on notice, present a draft of a decree dismissing the bill of complaint for want of equity, and directing, accordingly, disposition of the impounded funds.

Samuel Alschuler, United States Circuit Judge.
——, United States District Judge. John P. Barnes, United States District Judge.

[fols. 1638 & 1639] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 13,829

C. H. ACKER, Doing Business as C. H. Acker & Company, et al.,

vs.

UNITED STATES OF AMERICA et al.

SEPARATE OPINION—Feb. 1, 1935

I do not concur in the findings of this Court which adopt in toto the findings of fact made by the Secretary of Agriculture. Some of them, particularly those relating to salesmanship, costs and allowances for business getting and maintaining expenses are, in my opinion, against the weight of evidence. However, I am not prepared to say that the findings were made without any evidence to support them. I join, therefore, in the entry of the decree dismissing the bill.

(Signed) James H. Wilkerson, United States District Judge.

January 30, 1935.

[fol. 1640] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 13,829

C. H. ACKER, Doing Business as C. H. Acker & Company et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA ET AL., Defendants

DECREE—March 19, 1935

This cause came on for final hearing on the petition and complaint herein, praying for a decree enjoining and restraining the respondents from enforcing an order of the Secretary of Agriculture, dated January 8, 1934, and a Supplemental Order of the Secretary of Agriculture, dated March 12, 1934, in Bureau of Animal Industry Docket No. 402 of the Respondent, Henry A. Wallace, Secretary of Agriculture, known as "Secretary of Agriculture vs. C. H. Acker, doing business as C. H. Acker & Company et al.", which order prescribed the maximum rates and charges for stockyards services rendered the petitioners and other market agencies doing business at the Union Stockyards, Chicago, Illinois. The record made at the hearings before the Secretary was received in evidence by this Court, and some additional evidence was presented by petitioners, oral arguments were made, briefs were filed and the case was fully submitted to this Court by counsel for both parties.

In accordance with the views heretofore expressed in the opinion, findings of fact and conclusions of law of this Court, it is hereby

[fols. 1641 & 1642] Ordered, adjudged and decreed that the petition and complaint hereinbefore filed by the petitioners be, and the same is, hereby dismissed at petitioners' costs.

It is further ordered that the interlocutory injunction heretofore granted, including the provisions for depositing with the Clerk of this Court the amounts by which the rates and charges collected by petitioners exceed the rates and charges prescribed in the orders of the Secretary of Agriculture, be and the same is hereby continued in effect for thirty days from the date of this order.

It is further ordered that if petitioners do not take an appeal within thirty days from the date of this order, said interlocutory injunction shall be vacated at the expiration of said thirty-day period without further order of this Court. In the event that no appeal is taken and the interlocutory injunction is vacated at the expiration of thirty days as above provided, the amounts impounded shall be refunded to the shippers of livestock in such manner as shall be specified by subsequent order of this court.

It is further ordered that if an appeal shall be taken to the United States Supreme Court within thirty days from the date of this order, the interlocutory injunction heretofore granted, including the provisions for depositing with the Clerk of this Court the amounts by which the rates and charges collected by petitioners exceed the rates and charges prescribed in the orders of the Secretary of Agriculture, shall continue in effect during the pendency of said appeal and until final disposition of the matter by the Supreme Court.

Exceptions are allowed petitioners to the findings, conclusions and decree of this Court.

Dated this 19th day of March, 1935.

Samuel Alschuler, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fol. 1643] In United States District Court

[Title omitted]

Petition for Appeal—Filed April 18, 1935

The plaintiffs and petitioners herein, feeling themselves aggrieved by the Final Order or Decree of the District Court entered March 19, 1935, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the Final Decree or Order erroneous are set forth in Assignment of Errors filed herewith, to which reference is made.

They pray that a transcript of the record, proceedings and papers on which the Final Order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

They pray, that in accordance with the said Final Order or Decree, the interlocutory injunction heretofore granted herein, on, to-wit, April 19, 1934, including the provisions for depositing with the Clerk of this Court amounts by which the rates and charges collected by the plaintiffs and petitioners exceed the rates and charges prescribed in the [fols. 1644 & 1645] Orders of the Secretary of Agriculture, dated January 8, 1934, and March 12, 1934, shall continue in effect during the pendency of the said appeal and until final disposition of the matter by the Supreme Court of the United States, or until the further order of this Court.

They further pray that a proper order touching the security for costs required of them be made.

Geo. I. Haight, John S. Boyd, M. K. Hobbs, Attorneys for Plaintiffs and Petitioners.

Dated April 17,. 1935.

[fol. 1646] In United States District Court

[Title omitted]

Order Allowing Appeal and Providing for Supersedeas—April 18, 1935

On motion of the plaintiffs and petitioners, by their attorneys, the Court being advised in the premises.

It is hereby ordered that an appeal to the Supreme Court of the United States from the Final Order or Decree heretofore filed and entered herein be, and the same is hereby, allowed pursuant to the statutes and rules of court in such case made and provided; and that a certified transcript of the record, proceedings and papers on which said Final Order or Decree was made and entered be transmitted to the Supreme Court of the United States.

It is further ordered that the bond for costs on appeal be fixed at the sum of Five Hundred Dollars ($500.00): that said bond properly conditioned be filed and approved within ten (10) days from the date of this Order.

Pursuant to the provisions of said Final Order or Decree herein, it is further ordered that this appeal having been taken to the Supreme Court within thirty (30) days from the date of entry of said Final Decree or Order, the inter-

[fols. 1647 & 1648] locutory injunction heretofore granted herein on April 19, 1934, including the provisions for depositing with the Clerk of this Court the amounts by which the rates and charges collected by the plaintiffs and petitioners exceed the rates and charges prescribed in the Orders of the Secretary of Agriculture, shall continue in effect during the pendency of this Appeal and until final disposition thereof by the Supreme Court, or until the further order of this Court.

Samuel Alschuler, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

Dated this 18th day of April, 1935, at Chicago.

[fol. 1649] In United States District Court

[Title omitted]

Assignments of Error—Filed April 18, 1935

1. The Court erred in dismissing the Petition and Complaint.

2. The Court erred in adopting as its Findings of Fact, the Findings of Fact made by the Secretary of Agriculture.

3. The Court erred in finding that the Findings of Fact made by the Secretary of Agriculture are supported by substantial evidence.

4. The Court erred in adopting the Findings of Fact made by the Secretary upon the Court's independent consideration of the evidence received by the Secretary of Agriculture and that received by the Court.

5. The Court erred in finding that the Orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, are supported by Findings of Fact based on substantial evidence.

[fol. 1650] 6. The Court erred in finding that the Orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, are based on Findings of Fact supported by the weight of the evidence.

7. The Court erred in concluding as a matter of law that the Orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, were made by the Secretary after a full hearing in all respects conforming to the requirements of the Packers and Stockyards Act, 1921.

8. The Court erred in concluding as a matter of law that the Orders aforesaid are fully supported by the Findings of Fact made by the Secretary and that those findings are based on substantial evidence and are supported by the weight of the evidence and are not based upon any erroneous rules of law.

9. The Court erred in concluding as a matter of law that the rates, charges and practices prescribed by the Secretary in the Orders aforesaid are reasonable and not arbitrary and do not take the property of plaintiffs or any of them without due process of law in violation of the Fifth amendment to the Constitution of the United States.

10. The Court erred in finding that the rates, charges and practices prescribed by the Secretary in the Orders aforesaid are reasonable and not arbitrary.

11. The Court erred in finding that the rates, charges and practices prescribed by the Secretary in the Orders aforesaid do not take the property of the plaintiffs, or any of them, without due process of law.

[fol. 1651] 12. The Court erred in not finding that the Orders of the Secretary of Agriculture aforesaid are based upon erroneous rules of law.

13. The Court erred in not finding that the denial by the Secretary of Agriculture, of petitions for rehearing was arbitrary and unreasonable because such action precluded the plaintiffs and petitioners from showing that the prescribed rates would be confiscatory.

14. The Court erred in not finding that costs allowed for salesmen's salaries are inadequate, unreasonable and without relation to actual experience at the market.

15. The Court erred in not finding that costs deemed reasonable by the Secretary are inadequate, unreasonable and without relation to actual experience.

16. The Court erred in not finding that the costs found by the Secretary are without foundation in the record.

17. The Court erred in finding that reimbursement to cover management and to cover uninsurable risks is profit.

18. The Court erred in not finding that the classification by the Secretary of live stock into grades, depending upon weight, and the prescribing of rates on a consignment, rather than on a draft basis, was arbitrary, unreasonable and without regard or relationship to cost.

19. The Court erred in attributing to the Secretary of Agriculture the power to constitute himself the financial manager of a business and to substitute his judgment for that of the management of the business.

[fol. 1652] 20. The Court erred in not finding that the Secretary of Agriculture was arbitrary and unreasonable in not using any well recognized statistical method in the determination of costs.

21. The Court erred in not finding that the Secretary did not make an adequate allowance for the functions of the owners.

22. The Court erred in not finding that the rates prescribed by said Orders are confiscatory to the plaintiffs and to each of them.

23. The Court erred in finding that the plaintiffs did not sustain the burden of proof to show that the prescribed rates are confiscatory to them and to each of them.

24. The Court erred in not finding that the Secretary's allowance for business-getting and maintaining costs was unlawful, unreasonable and was not supported by the evidence.

25. The Court erred in not finding that there is no evidence in the record of unnecessary, wasteful or extravagant expenditures.

26. The Court erred in not finding that there was no waste or extravagance in any salaries paid by plaintiffs to salesmen.

27. The Court erred in not finding that in the absence of waste or improper expenditures in operating the business

of any respondent, the actual cost as shown by the record should have been accepted as reasonable and proper.

[fol. 1653] 28. The Court erred in not finding that the performance prescribed by the Secretary per salesman was based upon no evidence.

29. The Court erred in not finding that the performance prescribed by the Secretary per salesman was unreasonable and arbitrary.

30. The Court erred in not finding that a compliance with the Secretary's Order with reference to performance would throw out of employment necessary salesmen and that all of the evidence showed that they were necessary to perform the business.

31. The Court erred in not finding that each of the plaintiffs and petitioners has operated its business at a loss since the effective date of the Orders of the Secretary.

32. The Court erred in not finding that the so-called item of profit provided for by the Secretary in his costs, includes items of recurrent risk and that the allowance made is otherwise inadequate to cover the hazards of the entrepreneur.

33. The Court erred in not finding that the Nine Per Cent (9%) allowed by the Secretary for business-getting and maintaining, was by fiat and was not based upon any fact in the record, and was arbitrary and unreasonable.

34. The Court erred in finding that the Orders of the Secretary of Agriculture are supported by the authority of Tagg Bros. & Moorehead vs. United States, 280 U. S. 420.

35. The Court erred in not finding that the rates prescribed by the Secretary will not return a reasonable profit to any plaintiff and petitioner.

[fols. 1654-1657] 36. The Court erred in not finding that the Secretary went outside of the record to make his Findings of Fact.

37. The Court erred in ordering that the interlocutory injunction of April 19, 1934 should be vacated.

38. The Court erred in not ordering a permanent injunction suspending and enjoining the Orders of the Secretary of Agriculture.

39. The Court erred in finding that the rates prescribed by the Secretary include a substantial margin above reasonable costs plus profits.

40. The Court erred in finding that the Secretary had power to determine wages and salaries.

41. The Court erred in finding that the Secretary was justified in refusing to accept appraised salaries of owners.

Geo. I. Haight, John S. Boyd, M. K. Hobbs, Attorneys for Plaintiffs and Petitioners.

[fols. 1658-1660] Bond on appeal for $500.00, approved and filed April 23, 1935, omitted in printing.

[fols. 1661 & 1662] In United States District Court

[Title omitted]

Order Substituting Party Defendant—July 13, 1935

Upon motion of the petitioners and plaintiffs, the Court being advised in the premises be it and it is hereby ordered that Michael Igoe, United States District Attorney, Northern District of Illinois, Eastern Division, be substituted as a party defendant in lieu of Dwight H. Green, formerly United States District Attorney, Northern District of Illinois, Eastern Division.

Samuel Alschuler. John P. Barnes.

Dated Chicago, Illinois, July 13, 1935.

[fols. 1663-1678] Orders extending time for docketing case to and including Dec. 24, 1935, omitted in printing.

[fols. 1679 & 1680] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO APPLICATION OF RATES, ETC.—Filed Dec. 17, 1935

For the purposes of limiting the size of the record on appeal and the cost of printing and transmitting the same, it is hereby stipulated and agreed by and between the parties hereto, by their respective counsel of record, that the application of the rates prescribed by the Secretary of Agriculture in his Order of March 12, 1934 to the composite and aggregate business of the respondent market agencies for the year 1932 would have produced a $493,941 margin over the reasonable costs plus reasonable profits found by the Secretary.

For the same purposes the appellants (that is the respondent market agencies) agree not to contend that the rates prescribed by the Secretary of Agriculture would not produce revenue sufficient to meet reasonable costs plus reasonable profits as found by the Secretary, either in respect to individual agencies or all of the agencies in the aggregate when applied to the 1932 business.

Wendell Berge, G. N. Dagger, Attorneys for Appellees. Geo. I. Haight, John S. Boyd, M. K. Hobbs, Attorneys for Appellant.

Dated Chicago, June 22, 1935.

[fols. 1681 & 1682] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RE PHYSICAL EXHIBITS—Dec. 17, 1935

It appearing to the Court that certain of the exhibits of the Government, sometimes called Complainants' Exhibits, certain exhibits of the respondents before the Secretary of Agriculture, and certain of the exhibits of the petitioners before the Court, all of said exhibits being particularly identified in the præcipe for record on appeal, to be transmitted to the United States Supreme Court as physical ex-

hibits, are inappropriate for insertion in the printed record and have not been attached to the proposed record on appeal and that said exhibits should be inspected by the United States Supreme Court in their original form; it is hereby ordered that said exhibits be transmitted by the Clerk of this Court to the United States Supreme Court in their original form in connection with the statement of evidence and the transcript of record on appeal.

Samuel Alschuler. James H. Wilkerson. John P. Barnes.

[fol. 1683] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATED PRÆCIPE FOR TRANSCRIPT OF RECORD ON APPEAL —Filed Dec. 17, 1935

It is hereby stipulated by and between counsel for the respective parties hereto that the transcript of record on appeal in the above entitled cause shall consist of the following items:

The Clerk of the above identified court will please prepare a transcript of record to be transmitted to the Supreme Court of the United States in pursuance of the appeal heretofore taken, and include therein the following:

1. Petition and complaint filed April 18, 1934 including therein the exhibits thereto attached, namely,

Exhibit A—Arbitration agreement;
Exhibit B—Arbitration award, 1923;
Exhibit B-1—Present tariff;
Exhibit C—Proceedings, findings of fact, conclusion and order of Secretary of Agriculture dated Jan. 8, 1934 Bureau of Animal Industry Docket No. 402;
Exhibit D—Supplemental order of Secretary dated March 12, 1934.

2. Order of Judge Barnes dated April 18, 1934 convening Statutory Court.

[fol. 1684] 3. Interlocutory injunction dated April 19, 1934.

4. Answer of the defendants.

5. Order of June 12, 1934 for amendment to petition and complaint.

6. Answer to amendment to petition and complaint filed June 25, 1934.

7. Narrative statement of evidence taken before Statutory Court certified by the Court.

8. Narrative statement of evidence before the Secretary of Agriculture certified by the Court.

9. Order of court approving narrative statement of evidence.

10. Findings of fact dated December 31, 1934, signed by Judges Alschuler and Barnes.

11. Opinion of Judges Alschuler and Barnes filed February 1, 1935.

12. Opinion of Judge Wilkerson filed February 1, 1935.

13. Decree of Court entered March 19, 1935.

14. Petition for appeal filed April 18, 1935.

15. Order allowing appeal and supersedeas dated April 18, 1935.

16. Assignment of Errors filed April 18, 1935.

17. Citation on appeal dated April 18, 1935.

18. Statement of appellants pursuant to Rule 12 of the Supreme Court respecting jurisdiction on appeal.

19. Acknowledgment of service upon defendants of citation on appeal and other papers relating to the appeal.

20. Cost bond upon appeal.

21. Order re substitution of party defendant dated July 13, 1935.

22. All orders extending time to file record and docket appeal in Supreme Court.

23. Stipulation of parties dated June 22, 1935.

24. Order of court concerning physical exhibits.

25. This præcipe.

26. The following petitioners' exhibits:

a. Exhibit No. 1—Volume of livestock handled by petitioners, etc.

b. Exhibit No. 2—Statement of commissions, costs and profit or loss, etc.

c. Exhibit No. 3—Statement showing the application of Secretary's reasonable cost per head, etc.

[fol. 1685] d. Exhibit No. 4—Cost per head compared with commissions per head, etc.

e. Exhibit No. 5—Cost per head compared with the Secretary's reasonable cost per head, etc.

f. Exhibit No. 6—Percent of profit or loss under present rates compared with profit or loss under Secretary's rates, etc.

g. Exhibit No. 7—Owners' salary plus profit or less loss under present rates compared with owners' salaries plus profit or less loss under Secretary's rates, etc.

h. Exhibit No. 8—Relative cost per head of selling consignments of various sizes, etc.

i. Exhibit No. 9—The cattle salesman employed under present commission rates, etc.

j. Exhibit No. 10—Statement showing that small volumes firms have very little effect on market costs, etc.

k. Exhibit No. 11—Secretary's reasonable cost per car lot compared with the market median, weight average and bulk line, etc.

l. Exhibit No. 13—The following items of the record and transcript of evidence and exhibits in Secretary of Agriculture vs. C. H. Acker, etc. Bureau of Animal Industry Docket No. 402; other items of said record and transcript of evidence and exhibits appearing elsewhere in this præcipe:

A. Government Exhibit No. 45—letter of March 30, 1933, signed by Walters & Dunbar;

B. Government Exhibit 61, receipts by date of John Clay & Company;

C. Respondents' Exhibit No. 7, sketch of certain pens.

[fol. 1686] The Clerk will also certify to the Supreme Court, the following exhibits as physical exhibits:

a. Petitioners' Exhibit No. 12—Publication by Secretary of Agriculture entitled "Emergency Hog Market Program"

b. The following items of Petitioners' Exhibit No. 13, the record and transcript of evidence and exhibits in Secretary of Agriculture vs. C. H. Acker, etc. Bureau of Animal Industry, Docket No. 402:

A. Order of inquiry and notice of hearing dated September 23, 1932;

B. Transcript of evidence;

C. Proceedings, findings of fact, conclusion and Order of Jan. 8, 1934;

D. Petition for rehearing filed Feb. 7, 1934;

E. Supplemental order of Secretary issued March 12, 1934;

F. Amended petition for rehearing filed April 9, 1934;

G. Order denying petition for rehearing dated April 12, 1934;

H. The following government exhibits sometimes marked and referred to as complainants' exhibits:

Exhibit No. 6—A map of the stockyards;
Exhibit No. 7—A map of the stockyards;
Exhibit No. 14—Rules of Chicago Live Stock Exchange;
Exhibits Nos. 15—1 to 15—173—Blue audits of 1932;
Exhibit No. 36—Daily purchase record of C. E. Kleeman Co.
Exhibit No. 49—Bachman Cost study, 1932;
Exhibit No. 50—Salary questionnaires;
Exhibit No. 52—Cost study of order buyers, 1932;
Exhibit No. 56—Bachmann cost studies, 1931;
Exhibit No. 57—Salary questionnaires, 1931;

I. The following respondents' exhibits:

Exhibit No. 2—Year Book of Daily Drovers Journal, 1932;
Exhibit No. 8—Scale tickets;
[fol. 1687] Exhibit No. 9—Account sales;
Exhibit No. 11—Salary appraisals;
Exhibit No. 12—Mudd Cost studies, 1932;
Exhibit No. 16—Mudd Time study;
Exhibit No. 17—Distribution of salary and expense;
Exhibit No. 18—Mudd cost studies, 1932;
Exhibit No. 22—Correlation study by O'Neill;
Exhibit No. 23—Bulk line, median and weighted average costs.

The foregoing præcipe is stipulated as correct and sufficient and the defendant-appellees waive service of a copy thereof and of notice of filing thereof.

George I. Haight, Counsel for Appellants. Wendell Berge, Counsel for Appellees.

[fol. 1688] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 1689 & 1690] Citation, in usual form, filed April 18, 1935, omitted in printing.

[fol. 1691] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Dec. 26, 1935

I

Come now the appellants in the above entitled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

1. The Court erred in dismissing the petition and complaint and in refusing to make its interlocutory injunction permanent (Assignments of Error, Nos. 1, 37, 38).

2. The Findings of the Secretary of Agriculture and of the Court are not supported by the evidence (Assignments of Error Nos. 2, 3, 4, 5, 6, 7, 8, 24, 25, 26, 28, 33, 36).

3. The Orders of the Secretary of Agriculture are not supported by the findings or the evidence (Assignments of Error, Nos. 5, 6, 7, 8).

4. The rates, charges and practices prescribed by the Secretary of Agriculture are arbitrary, unreasonable, and confiscatory of the property of each of the petitioners and plaintiffs; and take the property of the petitioners and plaintiffs, and each of them, without due process of law in [fol. 1692] violation of the Constitution of the United States (Assignments of Error, Nos. 9, 10, 11, 22, 23, 39).

5. The Court erred in not finding that the Orders of the Secretary of Agriculture are based on erroneous rules of law (Assignment of Error, No. 12).

6. The Court erred in not finding that the Secretary's denial of petitions for rehearing was arbitrary and unreasonable (Assignment of Error, No. 13).

7. The costs found reasonable by the Secretary are inadequate, unreasonable and without relation to actual experience (Assignments of Error, Nos. 14, 15, 16).

8. Reimbursement to cover management and uninsurable risks is not profit (Assignments of Error, Nos. 17 and 32).

9. The Court erred in not finding that the classification of live stock into grades dependent upon weight and the prescribing of rates on a consignment rather than on a draft basis was arbitrary, unreasonable and without regard or relationship to cost (Assignment of Error, No. 18).

10. The Court erred in attributing to the Secretary of Agriculture the power to constitute himself the financial manager of a business and to substitute his judgment for that of the management of the business (Assignments of Error, Nos. 19, 27, 40).

11. The Court erred in not finding that the Secretary of Agriculture was arbitrary and unreasonable in not using any well-recognized statistical method in the determination of costs (Assignment of Error, No. 20).

[fol. 1693] 12. The Court erred in not finding that the Secretary did not make an adequate allowance for the functions of the owners (Assignment of Error, No. 21).

13. The Court erred in not finding that there is no evidence in the record of unnecessary, wasteful or extravagant expenditure (Assignments of Error, Nos. 25 and 26).

14. The Court erred in not finding that the performance prescribed by the Secretary per salesman was unreasonable and arbitrary (Assignment of Error, No. 29).

15. The Court erred in not finding that a compliance with the Secretary's Orders with reference to performance would throw out of employment necessary salesmen and that all of the evidence showed that such salesmen were necessary to perform the business of the petitioners and each of them (Assignment of Error, No. 30).

16. The Court erred in not finding that each of the plaintiffs and petitioners has operated its business at a loss since the effective date of the Orders of the Secretary (Assignment of Error, No. 31).

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17. The Court erred in finding that the Orders of the Secretary of Agriculture are supported by the authority of Tagg Bros. & Moorehead vs. United States, 280 U. S. 420 (Assignment of Error, No. 13).

18. The Court erred in not finding that the rates prescribed by the Secretary will not return a reasonable profit [fols. 1694 & 1695] to any plaintiff and petitioner (Assignments of error, Nos. 35, 39).

19. The Court erred in finding that the Secretary was justified in refusing to accept appraised salaries of owners (Assignment of Error, No. 41).

The appellants, plaintiffs and petitioners below, rely upon each and all of the assignments of error.

II

And the appellants further state that all of the record certified by the trial court and filed in this Court should be printed by the Clerk of this Court for the hearing of this cause, except those exhibits identified in the præcipe for record on appeal to be transmitted to this Court as physical exhibits.

Geo. I. Haight, John S. Boyd, M. K. Hobbs, Counsel for Appellants.

Dated Chicago, Illinois, December 24, 1935.

[fols. 1696 & 1697] PROOF OF SERVICE

STATE OF ILLINOIS,
County of Cook, ss:

M. K. Hobbs, being first duly sworn, on oath states that he is one of the counsel for the Appellants in the above entitled cause; that he served the Appellants' Statement Of Points To Be Relied Upon And Designation Of Parts Of The Record To Be Printed, upon counsel for the defendants-appellees by depositing in the United States mails at Chicago, Illinois, in properly stamped and addressed envelopes, a copy each to Michael Igoe, U. S. District Attorney, Northern District of Illinois, and Wendell Berge, Spe-

cial Assistant Attorney General, Washington, D. C. on December 24, 1935 simultaneously with the mailing of the original to the Clerk of the Supreme Court.

Further affiant saith not.

M. K. Hobbs.

Subscribed and sworn to before me this 24th day of December, 1934. Frances Savage, Notary Public. (Seal of Frances Savage, Notary Public, Cook County, Ill.)

[fol. 1698] [File endorsement omitted.]

Endorsed on cover: Enter George I. Haight. File No. 40,209. N. Illinois, D. C. U. S. Term No. 655. C. H. Acker, doing business as C. H. Acker & Company, et al., appellants, vs. The United States of America, Henry A. Wallace, Secretary of Agriculture, et al. Filed December 23, 1935. Term No. 655, O. T., 1935.

SUPREME COURT OF THE UNITED STATES.

No. 655.—October Term, 1935.

C. H. Acker, et al., Appellants,
vs.
United States of America, Henry A. Wallace, Secretary of Agriculture, et al.

Appeal from the District Court of the United States for the Northern District of Illinois.

[May 18, 1936.]

Mr. Justice Roberts delivered the opinion of the Court.

September 23, 1932, the Secretary of Agriculture, acting under the Packers and Stockyards Act, 1921,[1] ordered an inquiry and gave notice of a hearing to determine the reasonableness of rates charged by market agencies doing business at the Union Stockyards in Chicago. After protracted hearings and argument, he made findings of fact, announced his conclusion that the existing rates were unreasonable, and fixed new maximum rates. The appellants, who conduct market agencies, petitioned for rehearing. This the Secretary denied but by a supplemental order he increased some rates. An amended petition for rehearing was dismissed and the appellants then filed their bill in the district court seeking an injunction against enforcement of the original and supplemental orders. The case was heard by three judges who granted an interlocutory injunction. At final hearing the appellants offered in evidence the record of the proceedings before the Secretary and also proffered additional testimony which was received over the appellees' objection and subject to their exception. The court dismissed the bill, holding that the Secretary's findings were supported by substantial evidence. In the light of the evidence before him, and that adduced at the trial, the court adopted the Secretary's findings as its own; adjudged the prescribed rates reasonable, and concluded the orders entered were not arbitrary and did not operate so as to take the agencies' property without due process of law.

The appellants contended in the court below, and here insist, that the Secretary failed to apply the principles for ascertaining rea-

[1] 42 Stat. 159; U. S. C., Tit. 7, Chap. 9.

sonable rates approved by this court in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420; improperly invaded the field of management in determining reasonable unit costs; used an improper test period for ascertaining costs; disregarded the evidence in fixing an allowance for salesmenship costs and expense of getting and maintaining business, and arbitrarily denied the petitions for rehearing. These errors, so they claim, resulted in the fixing of unreasonable and confiscatory rates.

The services performed by commission merchants in the Chicago yards are substantially the same as those described in the opinion in *Tagg Bros. & Moorhead* v. *United States, supra,* touching the market agencies at the Omaha stockyards. Little capital is invested; the business is the rendering of personal services for which charges are made according to a uniform schedule. In ascertaining whether the rates are reasonable the prime factor is the agencies' costs, of which the most important are salesmen's compensation and the expense of getting and maintaining business. The old schedule of rates, like that prescribed for the Omaha yards, and considered in *Tagg Bros. & Moorhead* v. *United States, supra,* was based upon carload lots. In the present case the Secretary determined that a more accurate and reasonable schedule could be prepared on the basis of the consignment rather than that of the carload. In order to ascertain unit costs it was necessary for him to break down the total costs into three principal items,—salaries, other expenses, and interest. These in turn were subdivided thus: salaries into selling and buying, yarding, business getting and maintaining, office and administrative; other expenses into yarding, office, business getting and maintaining, administrative and general, and risk. Interest was calculated on the value of fixed assets, inventory of supplies, and cash working capital equivalent to one month's expense allowance. Costs were thus determined for each sort of livestock handled. In arriving at the rate an allowance was made for management and uninsurable risks; that is, for profit. The Secretary stated that he adopted the same principles for determining rates as were approved in the *Tagg Bros.* case. The complaints against the rates are not directed to these principles but to their application in the present case. We think they are without merit.

1. In general, the Secretary's findings are challenged as not giving proper weight to the past experience of the market agencies.

As the findings demonstrate, full consideration was given to the costs incurred, but in ascertaining a reasonable unit cost as the basis of a uniform rate the Secretary was not bound to, and indeed he could not, adopt any one agency's costs or an average of the costs of all of them; to do so would be to leave out of consideration relative size, relative volume, and relative efficiency of individual agencies.

2. The attack upon the allowance for salesmen's salaries is bottomed on the fact that the Secretary refused to adopt an average of salaries heretofore paid. He was not required so to do. What is a typical salesman's performance, and a fair recompense for it, is a matter of judgment based upon all the facts. That the Secretary considered and weighed the evidence is clearly shown by his findings; that he exercised an informed judgment upon it cannot successfully be denied.

Many proprietors of agencies take part in the activities of buying, selling, yarding, etc. As they own the enterprise they receive no salaries. Their recompense is the profit realized from the business. What each of them thus earned during the test period was disclosed at the hearing. The appellants insisted that the Secretary should in his cost computations fix a salary allowance for such owners without reference to their actual earnings. In order to furnish a basis for a finding in this behalf they procured independent persons, said to have knowledge of the subject, to make appraisals of the value of the services of these owners and introduced the appraisals in evidence. They insist that because the Secretary in arriving at selling costs ignored these hypothetical salaries his action was arbitrary and unreasonable. We cannot so hold. We think it evident that he was justified in considering conditions as he found them and refusing to load the business with a cost having no relation to actualities.

3. With respect to the cost of getting and maintaining business, the Secretary had before him a complete analysis of the actual expenditures made during an adequate test period. He had ample evidence pro and con as to the necessity and wisdom of these expenditures. It appears that he weighed the proofs, found that in certain respects the expenditures had been extravagant and wasteful, and, in the exercise of judgment, arrived at a cost he considered fair and adequate. The contention is that the amount to be expended for these purposes is purely a question of managerial

judgment. But this overlooks the consideration that the charge is for a public service, and regulation cannot be frustrated by a requirement that the rate be made to compensate extravagant or unnecessary costs for these or any purposes. We are not persuaded that the conclusions as to proper allowances on this head were without substantial support in the record.

4. It is charged that the Secretary erred in using a single year, 1932, as a test period. For detailed figures he used only that year, but he had before him a cost analysis for 1931, a survey of the economic history of the Chicago market and the factors which have influenced it since its establishment in 1865, a record of the annual receipts for each year from 1865 to 1932, and a tabulation of the monthly receipts for the years 1923 to 1932, inclusive. In addition he had data as to the relation of the volume of receipts at this market between 1920 and 1932, inclusive, to the total receipts of all the important livestock markets in the country; the ratios of rail and truck receipts for the years 1923 to 1932, inclusive, and a record of seasonal variations in rail and truck receipts for 1932. He had studies showing distribution of receipts amongst the different classes of animals in each year from 1923 to 1932, inclusive. His findings show that he gave consideration to changing economic conditions affecting the Chicago market. They show that he used 1932 as a test period because it was favorable to the appellants, since the receipts at Chicago in that year were lower than those for any of the preceding ten years, and therefore unit costs calculated on the basis of receipts in that year would naturally tend to be higher than those of preceding years. In the light of the proofs and the findings, we are unable to find anything arbitrary or unreasonable in the selection of the data on which to base a judgment.

5. The appellants assert the Secretary acted arbitrarily in refusing to rehear the case. Hearings began May 15 and ended November 7, 1933. December 13 the matter was argued. January 8, 1934, the original order was entered prescribing maximum rates effective February 7, 1934. On the day last mentioned the appellants presented a petition for rehearing which is not in the record. From the summary of its contents found in the bill it appears that petitioners claimed the reduction in revenues consequent upon the new rates made it impossible for them to pay necessary operating

expenses which had been increased by the National Recovery Act and the Agricultural Adjustment Act; that costs should have been calculated by using the draft rather than the consignment as a basis; that the rates were inconsistent with the level of costs and the trend of costs during 1933; and that the petitioners desired to prove the efficiency of their methods of handling animals during 1933. Data in support of the petition was tendered and received. The Secretary reconsidered his prior decision, refused a rehearing, and ordered certain increases in the rates. Within a month appellants presented an amended petition for rehearing which is not in the record but is sketched in the bill of complaint. The reasons advanced in support of the application are alleged to have been: a net reduction of twenty-five per cent. of gross income as compared with 1933 would result from the new schedule; such a reduction would render petitioners' income insufficient to pay the costs of doing business; the schedules promulgated were based on findings for the years 1931 and 1932 whereas, during 1933 and 1934, profound changes occurred which adversely affected the petitioners' business; the federal legislation of 1933 increased petitioners' expenses. It thus appears that although the appellants had opportunity until one month prior to the making of the order to produce any evidence as to conditions prevailing during 1933, and to call attention to any conclusions to be drawn therefrom, they delayed doing so until shortly after the order was issued. The delay in presenting proofs concerning these matters is unexplained.[2]

The amended petition was filed about three months after the original order issued. It is inconceivable that economic conditions had so altered in this brief period as to demonstrate that the new schedule of rates, if just when promulgated, had become unjust and oppressive. The schedule should have been given a trial and any alteration or modification should have been asked in the light of more extensive experience. We are unable to find anything arbitrary or unreasonable in the denial of the petitions.

6. The appellants insist that they were entitled to a trial *de novo* on the issue of confiscation and on the issue of the denial of the petitions for rehearing.

A majority of the District Court said:

"Having considered the new evidence offered for the first time in this court, and all the evidence offered before the Secretary, and

[2] Compare *United States* v. *Northern Pacific Railway*, 288 U. S. 490.

having concluded, as we have, that there is no showing of confiscation, we find it unnecessary to determine whether the evidence offered for the first time in this court was admissible. Tagg Bros. & Moorhead *v.* United States, 280 U. S. 420."

One of the judges, in a separate opinion, stated:

"I do not concur in the findings of this Court which adopt in toto the findings of fact made by the Secretary of Agriculture. Some of them, particularly those relating to salesmanship, costs and allowances for business getting and maintaining expenses are, in my opinion, against the weight of evidence. However, I am not prepared to say that the findings were made without any evidence to support them. I join, therefore, in the entry of the decree dismissing the bill."

It is to be noted that in spite of the allegations of the bill the case does not involve any question of confiscation. The appellants employ little physical property in their business and no complaint is made as to the allowance of interest on such as they do employ. They render a personal service and the issue before the Secretary was whether the uniform schedule of rates for that service was or was not reasonable. On this issue he was bound to afford the appellants due process. In fact he gave them adequate notice and accorded them a full hearing. He carefully weighed the evidence, as demonstrated by voluminous and detailed findings; he exposed with candor the facts and considerations forming the basis of his ultimate conclusions. The appellants had opportunity for a full presentation of their case. Under Section 316 of the Packers and Stockyards Act the district court sits not to afford a trial *de novo* but to review the administrative action. *Tagg Bros. & Moorhead* v. *United States, supra,* p. 443. No reason appears why the appellants could not be afforded due process of law by a review of any questions they deemed material upon the record as made in the administrative proceeding, or why the delay, expense and burden of a new trial should be imposed simply because they demanded it. The issue before the Secretary was not confiscation but the reasonableness of a charge for personal service. No new or different issue could have been presented upon a trial *de novo.* We think the court correctly held that its function was the consideration of questions raised upon the record made before the Secretary.

Little need be said concerning the claim that a trial *de novo* should have been afforded the appellants on the question of their right to a rehearing. As has been said, the bill of complaint sum-

marizes the petition and amended petition for rehearing and asserts that the Secretary arbitrarily refused to grant them. No evidence in support of this allegation was tendered in the District Court. It is idle to discuss the right of the appellants to make a showing in this behalf in the District Court when in fact none was made or attempted and the court was left, as we are, with no light on the subject save what is afforded by the record before the Secretary and the averments of the complaint.

The decree is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.